TRANSCRIPT OF RECORD,

SUPREME COURT OF THE UNITED STATES.

No. 199

ISAAC UNDERHILL, PLAINTIFF IN ERROR,

vs.

PEGGY F. PATTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 11, 1890.

SUPREME COURT OF THE UNITED STATES.

No. 426.

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vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and, in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Friday, the third day of July, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-second year.

WILLIAM H. BRADLEY, *Clerk.*

PEGGY F. PATTON
vs. } In ejectment.
ISAAC UNDERHILL.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

Be it remembered that on the sixth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, came Peggy F. Patton, plaintiff, by Messrs. Wead and Jack, her attorneys, and filed
2 in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at the city of Chicago, in said district, his declaration in ejectment against Isaac Underhill, defendant, with a notice, affidavit, and bond for costs thereto attached; which said declaration, notice, affidavit, and bond are in the words and figures following, to-wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court.—July term, A. D. 1867.

Peggy F. Patton, who is a citizen of the State of Virginia, by Wead & Jack, her attorneys, complain of Isaac Underhill, who is a citizen of the State of Illinois, in a plea of trespass and ejectment.

For that, whereas heretofore, to wit, on the first day of May, in the year eighteen hundred and sixty-seven (A. D. 1867), at and within the county of Iroquois, and State of Illinois, the said plaintiff was possessed of her own demesne in fee simple of a certain tract or parcel of land, with the appurtenances, situate in the county of Iroquois, in the said State of Illinois, and described as follows, to wit: The south half of section twenty-two (22), in township twenty-seven (27) north, of range thirteen (13) west of the second principal meridian, in which prem-
3 ises the said plaintiff claims a life estate, which said premises exceed in value the sum of five hundred dollars, and which the said plaintiff claim in fee simple.

And the said plaintiff being so possessed thereof, the said defendant afterward, to wit, on the same day and year last aforesaid, entered the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withhold, from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of five hundred dollars; and therefore she brings suit, etc.

WEAD & JACK,
Attorney for Plaintiff.

To Isaac Underhill, the above-named defendant:

You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which this notice is attached, will be filed in the circuit court of the United States for the northern district of Illinois, on the fifth day of the July term thereof, A. D. 1867, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead a judgment by default will be entered against you, and the plaintiff will recover
4 possession of the premises specified in said declaration.

Dated this twenty-eighth day of June, A. D., 1867.

WEAD & JACK,
Attorneys for Plaintiff.

Served copy of within on Isaac Underhill, June 28, 1867.

H. M. WEAD.

STATE OF ILLINOIS, *Peoria County, ss:*

Sworn to & subscribed before me this July 5, 1867.

[NOTARIAL SEAL.]

WM. JACK,
Notary Public.

Bond for costs.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

United States circuit court.—July term, A. D. 1867.

PEGGY F. PATTON
vs.
ISAAC UNDERHILL. } In ejectment.

I enter myself security for costs in this cause, & promise to pay all costs which may accrue to the opposite party, or to the officers of this court; and, in default of payment by him or any costs adjudged to be paid by him, I agree that execution may issue against my property for any costs taxed against him.

5 Dated at Peoria, July 5, 1867.

H. M. WEAD.

(Endorsed:) Filed July 6th, 1867.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the 6th day of July, in the July term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

PEGGY F. PATTON
vs.
ISAAC UNDERHILL. } Ejectment.

Now comes the plaintiff, by Wead and Jack, her attorneys, who file her declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant; and, on motion of the

plaintiff's attorney, it is ordered by the court that said cause be docketed, and the defendant ruled to plead within twenty days, or that his default be entered.

On this day, to wit, the 13th day of July, A. D. 1867, came said defendant, by his attorney, and filed in said clerk's office his plea in said entitled clause; which said plea is in the words and figures following, to wit:

6 *Plea.*

United States circuit court, nor. dist. of Ill.

PEGGY F. PATTON }
vs. }
ISAAC UNDERHILL. }

The said defendant comes & defends the wrong & injury, when, &c., and says that he is not guilty of unlawfully withholding from said plaintiff possession of said premises; & of this he puts himself upon the country, &c.

GEO. F. HARDING,
Att'y for Def't.

(Endorsed:) Filed July 13, 1867.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 30th day of May, in the adjourned May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Hearing & verdict.

PEGGY F. PATTON }
vs. } Ejectment.
ISAAC UNDERHILL. }

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: John Hoffman, G. H.
7 Fitch, James M. Pratt, Richard Cody, Joshua Thomas, Thomas McKee, A. Beebe, James Mason, William Lunn, Clement Pierce, William Wilcox, and S. H. Gilbert, who were all duly elected, tried, and sworn well and truly to try said issue; and after hearing the evidence, and receiving the instructions of the court, the jury returned into court the following verdict, to wit:

We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration as follows: A certain tract or parcel of land, with the appurtenances, situate in the county of Iroquois, in the said State of Illinois, and described as follows, to wit: The south half of section twenty-two (22), in township twenty-seven (27) north, of range thirteen (13) west of the second principal meridian, in which premises the said plaintiff claims a life-estate. We also find the estate established in the plaintiff on the trial to be a life-estate, and assess her damages to the sum of one cent.

And thereupon the defendant, by his attorney, moves the court for a new trial herein.

8 *Bill of exceptions.*

On the hearing of said cause the following exceptions were taken, and were allowed by the court, and are in the words and figures following, to wit:

United States circuit court, northern district of Illinois.—May term, A. D. 1868.

PEGGY F. PATTON }
vs.
ISAAC UNDERHILL. }

Be it remembered that upon the trial of the above-entitled case at the above-entitled term of said court, the plaintiff offered in evidence the following instruments in writing, viz:

Patent.

First. A patent for the land from the United States government to Robert Hord, dated November 1st, 1839; which said patent is in the words & figures following, to wit:

The United States of America to all to whom these presents shall come, greeting:

Certificate No. 6,622.

9 Whereas Robert Hord, Caroline County, Virginia, has deposited in the General Land Office of the United States a certificate of the register of the land office at Danville, whereby it appears that full payment has been made by the said Robert Hord, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the south half of section twenty-two, in township twenty-seven north, of range thirteen west, in the district of lands subject to sale at Danville, Illinois, containing three hundred and twenty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Robert Hord.

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these
10 presents do give and grant, unto the said Robert Hord, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Robert Hord, and to his heirs and assigns, forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

[L. S.] MARTIN VAN BUREN.

By the President:

By M. VAN BUREN, JR., *Sec'y.*

Examined:

H. M. GARLAND,
Recorder of the General Land Office.

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11 GENERAL LAND OFFICE, *Sept.* 25, 1866.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy is a true and literal exemplification from the patent records of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JO. S. WILSON,
Commissioner of the General Land Office.

Deed from Hord to Patton.

Second. A deed from Robert Hord to John M. Patton, dated February 4, 1842; which said deed is in the words and figures following, to wit:

This indenture, made this fourth day of February, in the year of our Lord one thousand eight hundred and forty-two, between Robert Hord, late of the county of Caroline, in the State of Virginia, of the first part, and John M. Patton, of the city of Richmond, and State aforesaid,
12 of the second part, witnesseth: That the said Robert Hord, for and in consideration of the sum of two thousand dollars to him in hand paid by the said John M. Patton, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, & sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, & sell, alien, enfeoff, and confirm, unto the said John M. Patton, his heirs, and assigns, forever, the following tracts or parcels of land, with all and singular the [tracts or parcels of land, with all and singular the] rights, privileges, immunities, and appurtenances thereto belonging, or in any manner appertaining, situate, lying, and being in the county of Iroquois, in the State of Illinois, which were purchased by the said Robert Hord from the United States; that is to say: The south half of the northeast quarter of section eighteen, in township twenty-four north, of range ten east, and containing eighty acres; also the southeast quarter of section eighteen, in township twenty-four north, of range ten east, and containing one hundred and sixty acres; also the south half of section seventeen, in township twenty-four
13 north, of range ten east, and containing three hundred and twenty acres; also the west half of the northwest quarter of section seventeen, in township twenty-four north, of range ten east, and containing eighty acres; also the southeast quarter of the northwest quarter, & the southwest quarter of the northeast quarter of section seventeen, in township twenty-four north, of range ten east, and containing eighty acres; also the east half of the northeast quarter of section seventeen, in township twenty-four, north of range ten east, and containing eighty acres; also the east half of the southeast quarter of section twenty-three, in township twenty-seven north, of range thirteen west, and containing eighty acres; also the south half of section twenty-two, in township twenty-seven north, of range thirteen west, and containing three hundred and twenty acres; to have and to hold the said several tracts or parcels of land, with all and every of their appurtenances, unto the said John M. Patton, his heirs, and assigns, forever, to and for his and their only proper use and behoof; and the said Robert Hord, for himself, his heirs, &c., the said several tracts or parcels of land, with their and every of
14 their appurtenances, unto the said John M. Patton, his heirs, and assigns, against the claims of all persons whomsoever, shall, will, and doth warrant and forever defend by these presents.

In testimony whereof, the said Robert Hord hath hereunto subscribed his name and affixed his seal the day and year in this indenture first written.

ROB. HORD. [SEAL.]

CORPORATION OF FREDERICKSBURGH:

We, John Hart and Robert Dickey, justices of the peace in the corporation aforesaid, in the State of Virginia, do hereby certify that Robert Hord, a party to a certain deed bearing date on the fourth day of February, 1842, and hereto annexed, personally appeared before us, in our corporation aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgement to the clerk of the court of Iroquois, in the State of Illinois, or register of deeds in said county, or other proper officer whose duty it is to record deeds,
15 in order that the said deed may be recorded. Given under our hands and seals this 5th day of February, 1842.

JOHN HART, *J. P.* [SEAL.]
ROBERT DICKEY. [SEAL.]

STATE OF VIRGINIA,
Corporation of Fredericksburgh, to wit:

I, John James Chew, clerk of the court of hustings of said corporation, do hereby certify that John Hart and Robert Dickey, esquires, whose hands and seals are affixed to the above certificate of acknowledgement, were, at the time of taking said acknowledgment, and still are, justices of the peace in said corporation duly commissioned and sworn, and that full faith and credit are due to all their acts and deeds as such.

In testimony whereof, I have hereunto set my hand and caused the seal of the said court to be hereto affixed this first day of March, in the year of our Lord 1842, and of our independence the sixty-sixth.

[SEAL.] J. J. CHEW, *C. C. H. F.*

16 STATE OF VIRGINIA,
Corporation of Fredericksburgh, to wit:

I, Benjamin Clark, mayor and ex officio presiding justice in the court of hustings of said corporation, do hereby certify that John James Chew, whose hand and seal of office are affixed to the above certificate, is clerk of the hustings court of said corporation, and that due faith and credit ought to be paid to all his acts and deeds as such. Certified under my hand and seal this 1st day of March, 1842.

BENJ. CLARK, *J. P.* [SEAL.]

STATE OF VIRGINIA,
Corporation of Fredericksburgh, to wit:

I, John James Chew, clerk of the court of hustings of said corporation, do hereby certify that Benjamin Clark, esquire, whose hand and seal are affixed to the above certificate, is mayor and ex officio presiding justice in the court of hustings of said corporation.

Certified this 1st day of March, 1842.

J. J. CHEW, *C. C. H. F.*

17 Filed for record August 19th, 1842, at ten o'clock a. m., and recorded on the same day.

JNO. HARWOOD, *Recorder.*

STATE OF ILLINOIS, *Iroquois County, ss:*

I, Thomas Vennum, clerk of the circuit court and ex officio recorder in and for the said county in said State, do hereby certify that the foregoing is a true and perfect copy of a warranty deed from Robert Hord to John M. Patton, filed for record August 19th, 1842, and recorded in Book "B" of deeds, &c., pages 93 and 94.

Witness my hand and seal of said court, at office in Watseka, this 13th day of October, A. D. 1866.

[SEAL.] THOMAS VENNUM, *Clerk.*

[5-cts. rev. stamp cancelled.]

STATE OF VIRGINIA,
Corporation of Fredericksburgh, ss:

I, John James Chew, clerk of the court of hustings of said corporation, which is a court of record, do hereby certify that the above deed from Robert Hord, as the same appears to be acknowledged, is so acknowledged in conformity with the laws of the State of Vir-
18 ginia prescribing the regulations for the acknowledgement of similar instruments therein.

In testimony whereof, I hereunto set my hand and affix the seal of my said court this 31st day of October, eighteen hundred & sixty-six.

[SEAL.] J. J. CHEW, *Clerk.*

STATE OF VIRGINIA,
Corporation of Fredericksburgh, sct:

I, John James Chew, clerk of the court of hustings of said corporation, which is a court of record, do hereby certify that the original deed from Robert Hord to John M. Patton, of which the above purports to be a copy, is executed and acknowledged in conformity with the laws of the State of Virginia.

In testimony whereof, I hereunto set my hand and affix the seal of my said court this 6th day of July, 1867.

[SEAL.] J. J. CHEW, *Clerk.*

To the reading of which in evidence the defendant objected,
19 because the same was not properly proved or acknowledged; but the court overruled the objection & admitted the same.

Will of Jno. M. Patton.

Third. A copy of the will and probate of John M. Patton; which said copy of will and probate is in the words and figures following, to wit:

I, John M. Patton, of the city of Richmond, and State of Virginia, make this my last will and testament:

I give and bequeath to John M. Patton, junior, as trustee, the sum of ten thousand dollars, to be paid to him out of my estate, or retained by him as executor, either in money, or in bonds and stocks belonging to me. The interest, dividens, or profits of said ten thousand dollars to be paid to Eliza W. Patton, my daughter, as they accrue, for her sole and separate use dur[dur]ing her life, free from the control of, or liability for the debts of, any husband she may marry. And at her death the said ten thousand dollars, or the stocks or securities in which the same may be invested, the said trustee shall pay or transfer to such person

or persons as the said Eliza W. Patton by deed or will may appoint, and in default of such appointment, to the children and descendants of said Eliza W. Patton (if any), on the principles of the statute of distributions or if she [she] leave no such child or descendant, then the same to be transferred or paid to the next of kin of said Eliza W. Patton.

All the rest of my estate and property, real and personal (including all stocks, securities, and money), I devise and bequeath to my wife, P. F. Patton (in case she may survive me), during her life, with power to give the same, or any portion or portions thereof, from time to time, to any of our children, either during her life or at her death by deed or will; and in default of such appointment in whole or in part, at her death, or in case she do not survive me, I devise and bequeath all the said property, real and personal, not so disposed of by my wife, to be divided between such of our children and their descendants as may be living at her death, if she survive me, or at my death if she do not; giving to such descendants the share only of their parents. In making such division, my daughter Eliza is to participate without being charged with the bequest hereinbefore made for her benefit; but each of the children (including Eliza) who may be of age at the time of my death, are to be charged as for advancements with the sum of one thousand dollars, and also with such advancements of money or property as may have been made them by my wife during her life under the power hereinbefore given her.

I hereby authorize my executrix and executor, or whichsoever of them may qualify, to sell and convey any or all of my estate, real or personal, and they shall invest the proceeds in such manner as they, or either of them who may qualify, may deem judicious; holding the proceeds of such sale subject to the provision of the above clauses in respect to the property so sold.

I hereby constitute and appoint my wife, P. F. Patton, & my son John M. Patton, jr., executrix and executor of this, my will, and request that they may be allowed to qualify without giving security.

Written altogether with my own hand and signed, as and for my last will, this 30th day of May, 1856.

JNO. M. PATTON.

I make the following addition to my will as a codicil thereto: Since the above will was made I have loaned my son Isaac the sum of two thousand dollars; if I do not collect that debt I direct that he be released from the payment of any interest on the same, and that he be charged with the principal sum of two thousand, as for an advancement, in addition to the one thousand dollars mentioned in my will.

The above codicil written & executed this 7th July, 1858.

JNO. M. PATTON.

At a circuit court of the city of Richmond, for the trial of civil causes, held at the State court-house in said city, on Wednesday, November the 10th, 1858.

This writing, purporting to be the last will and testament of John M. Patton, deceased, with a codicil thereafter written, was presented in court for proof, and, there being no subscribing witness to said will and codicil, John G. Williams and Phillip M. Slaughter were duly sworn, and severally testified that they are well acquainted with the handwriting of the said John M. Patton, and verily believe the

said will and codicil, and the names subscribed thereto, are wholly in the said John M. Patton's handwriting; whereupon it was ordered that the said writings be established as the true last will and testament of the said John M. Patton, deceased, and recorded as such; and, on the motion of John M. Patton, jr., the executor named in the said will, who made oath thereto according to law, and entered into and acknowledged a bond in the penalty of one hundred and eighty thousand dollars, conditioned as the law directs, but without security (it being directed by the said will that none should be required of him), a certificate was granted him for obtaining a probate of the said will, with the codicil thereafter written, in due form; and liberty was reserved to P. F. Patton, the executrix in the said will named, to join in the said probate when she shall think fit.

24 Teste:

JAMES ELLETT, *Clerk.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, Benjamin Pollard, clerk of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that the foregoing is a true copy of the last will and testament of John M. Patton, deceased, and the order of court admitting the same to probate, as appears from the records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Richmond, the 3d day of December, 1866.

[SEAL.] BENJA. POLLARD, *Clk.*

[5-cts. rev. stamp, cancelled.]

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, John A. Meredith, clerk of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that Benjamin Pollard, whose name appears to the foregoing certificate, is now, and was
25 at the time it was signed, clerk of the said court, and that said attestation is in due form.

Given under my hand and seal this 3d day of December, 1866.

JOHN A. MEREDITH.

STATE OF ILLINOIS, *Iroquois County, ss:*

I, Thomas Vennum, clerk of the circuit court and ex officio recorder within and for said county, in the State aforesaid, do hereby certify that this copy of will was filed for record in my office the 31st day of May, A. D. 1867, at the hour of eight o'clock a. m., and duly recorded in Book 41 of deeds, on page 549.

THOMAS VENNUM, *Clerk.*

No. 14,232.

STATE OF VIRGINIA, *City of Richmond, ss:*

I, Benjamin Pollard, clerk of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that the original last will & testament of John M. Patton, deceased, a copy of which is hereto annexed, was duly executed & proved agreeably to the laws and
26 usages of the State of Virginia in which the same was made and executed.

In testimony whereof I have hereunto set my hand & affixed the seal of said court, at Richmond, this 20th day of March, A. D. 1868.

[SEAL.] BENJA. POLLARD, *Clk.*

[5 cts. rev. stamp, cancelled.]

STATE OF VIRGINIA, *City of Richmond, ss:*

I, John A. Meredith, judge of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that the original last will and testament of John M. Patton, deceased, a duly authenticated copy of which is hereunto annexed, was and is duly executed and proved, agreeably to the laws and usages of the State of Virginia, in which the same was made and executed.

Given under my hand at the city of Richmond, in said State, this 23rd day of March, A. D. 1868.

JOHN A. MEREDITH.

To the reading of which in evidence the defendant objected,
27 because it was immaterial and irrelevant, without proof of the death of the alleged decedent, & of the identity of the devisee with said plaintiff; and also because said instruments are not properly proved, there being no sufficient proof that the said will was probated, or where it was probated; but the court overruled the objection & admitted the same. To each of which said several rulings of the court, in admitting said testimony, the said defendant, then & there excepted & excepts.

This was all the evidence upon the part of the plaintiff.

The defendant then offered in evidence the following instruments in writing, i. e.:

Sheriff's deed.

First. A deed from the sheriff of Iroquois County, Illinois, to L. M. Peck, dated July 1st, 1864; which said deed is in the words & figures following, to wit:

Know all men by these presents that whereas at the June term, A.D. 1862, of the county court of Iroquois County, Illinois, a judgment was obtained in said court in favor of the State of Illinois against the
28 following described lots, pieces, or parcels of land for the several sums set opposite said tracts, respectively, to wit:

The east half of southwest qr. sec. 22, town. 27 N., R. 13 west, for	$4 58
The west half of southwest qr. sec. 22, town. 27 N., R. 13 west, for	$4 58
The east half of southeast qr. sec. 22, town. 27 N., R. 13 west, for	$4 58
The west half of southeast qr. sec. 22, town. 27 N., R. 13 west, for	$4 58
The southwest qr. of northeast qr. sec. 26, town. 27 N., R. 13 west, for	$6 06
The south half of northwest qr. sec. 26, town. 27 N., R. 13 west, for	$13 97

Said sums being the whole amount of taxes, interest, and costs assessed upon said lots, pieces, or parcels of land for the year A. D. 1861; and whereas on the 25th day of June, A. D. 1862, George King, then treasurer and ex officio collector of the county aforesaid, by virtue of a precept or order issued out of the county court aforesaid, dated the sixteenth day of June, A. D 1862, and directed to the said George King, treasurer and collector as aforesaid, did expose at public sale at the court-house in the county aforesaid, in conformity with all the requirements
29 of the statutes in such case made and provided, the said lots, tracts, or parcels of land above described, for the satisfaction of

the judgment so rendered against them as aforesaid; and whereas, at the time and place aforesaid, E. H. Collins having offered to pay the aforesaid sums of money, together with the costs of sale, amounting to the sum of forty-one dollars and fifty-nine cents, for the said lots, pieces, or parcels of land hereinbefore described, to wit:

For the east half of southwest quarter of section No. 22, in township No. twenty-seven north, of range No. thirteen west, the sum of five dollars and twelve cents; and for the west half of said southwest quarter of said section twenty-two, in the township and range aforesaid, the sum of five dollars and twelve cents; and for the east half of the southeast quarter of said section No. twenty-two, in said township and range, the sum of five dollars and twelve cents; and for the west half of the southwest quarter of said section No. twenty-two, in said township and
30 range, the sum of five dollars and twelve cents; and for the southwest quarter of the northeast quarter of section No. twenty-six, in said township and range, the sum of six dollars and sixty cents; and for the south half of the northwest quarter of said section No. twenty-six, in said town. and range, the sum of fourteen dollars and fifty-one cents; which was the least quantity of said lots, pieces, or parcels of land bid for, the said lots, pieces, or parcels of land were then and there struck off and sold to the said E. H. Collins for said sums of money; and whereas the said E. H. Collins has duly assigned his certificates of purchase of the lands above described unto L. M. Peck; and whereas the said L. M. Peck has made and delivered to me his affidavit of having complied with all the requirements of the statute and constitution of the State of Illinois necessary to entitle him to a deed for the premises so sold to the said E. H. Collins as aforesaid: Now, therefore, I,
31 Harrison O. Henry, sheriff of the county of Iroquois, for and in consideration of the said above-named sum, amounting to forty-one dollars and fifty-nine cents, paid to George King, treasurer and collector as aforesaid, by the said E. H. Collins at the time of said sale; and in the further consideration of the sum of one dollar to me in hand paid by L. M. Peck, the assignee of said E. H. Collins, and by virtue of the statute in such cases made and provided, have granted, bargained, and sold, and, by these presents, do grant, bargain, and sell, unto the said L. M. Peck, and to his heirs and assigns, forever, the premises so sold as aforesaid, situated and being in Iroquois County, Illinois, to wit: The east half of the southwest quarter, and the west half of the southwest quarter, and east half of the southeast quarter of section No. twenty-two (22), and the west half of the southeast quarter of section No. twenty-two, and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section No. twenty-six (26);
32 all of the said lands being in township No. twenty-seven (27) north, of range No. thirteen (13) west, of second principal meridian, to have have and to hold unto him, the said L. M. Peck, his heirs, and assigns, forever, subject, however, to all the rights of redemption provided by law.

In witness whereof, I, Harrison O. Henry, sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal this first day of July, A. D. 1864.

H. O. HENRY, [SEAL.]
Sheriff of Iroquois County, Illinois.

STATE OF ILLINOIS, *Iroquois County, ss:*

I, Thomas Vennum, clerk of the circuit court in and for the said county, in said State, do hereby certify that Harrison O. Henry, sheriff

of Iroquois County, Illinois, whose signature appears to the within deed and who is personally known to me to be the real person who signed and executed the same, this day, in his proper person, came before
33 me, and acknowledged that he executed the same, as such sheriff aforesaid, for the uses and purposes in said deed expressed.

Witness Thomas Vennum, clerk, and the seal of said court affixed, at Middleport, this first day of July, A. D. 1864.

[SEAL.] THOMAS VENNUM, *Clerk.*

STATE OF ILLINOIS, *Iroquois County, ss:* No. 8,514.

I do hereby certify that this deed was filed for record July 1st, A. D. 1864, at nine o'clock a. m., and duly recorded in Book No. 30, page 371.

THOMAS VENNUM,
Clerk & Recorder.

Quit-claim deed from Peck & wife to Bourland.

Second. A deed from L. M. Peck & wife to B. L. T. Bourland, dated July 1st, 1864; which said deed is in the words and figures following, to wit:

This indenture, made this first day of July, in the year of our Lord one thousand eight hundred and sixty-four, between L. M. Peck
34 and Sara C. Peck, his wife, of the county of Iroquois, and State of Illinois, party of the first part, and B. L. T. Bourland, of the city and county of Peoria, and State of Illinois, the party of the second part, witnesseth: That the said party of the first part, for and consideration of one hundred dollars in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim, unto the said party of the second part, his heirs, and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lots, pieces, or parcels of land, to wit: The east half of the southwest quarter, and the west half of the southwest quarter, and the east half of the southeast quarter, and the west half of the southeast quarter of section No. twenty-two (22),
35 and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section No. twenty-six (26); all of the foregoing lands lying and being in township No. twenty-seven (27) north, of range No. thirteen (13) west of the second principal meridian, in Iroquois County, Illinois; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs, and assigns, forever.

And the said L. M. Peck and Sarah C. Peck, his wife, the party of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by, or results from, all laws of this State pertaining to the
36 exemption of homesteads. And the said party of the first part, for themselves and their heirs, executors, and administrators, do covenant, promise, and agree, to and with the said party of the second

part, his heirs, executors, administrators, and assigns, that they hath not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered, in any manner or way whatsoever.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year first above written.

L. M. PECK . [SEAL.]
SARAH C. PECK. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF ILLINOIS, *Iroquois County, ss:*

I, Asa B. Roff, a notary public in and for said county, in the
37 State aforesaid, do hereby certify that L. M. Peck and Sarah C. Peck, his wife, who are personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth; and the said Sara C. Peck, wife of the said L. M. Peck, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she, also by me, being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads,
38 without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this first day of July, A. D. 1864.

[SEAL.] ASA B. ROFF, *N. P.*

STATE OF ILLINOIS, *Iroquois County, ss:* No. 8,517.

The within deed was filed for record in the recorder's office of Iroquois County, on the second day of July, A. D. 1864, at five o'clock p. m., and duly recorded in Book No. 30 of deeds, on page 374, &c.

THOMAS VENNUM,
Recorder of Iroquois County.

Quit-claim deed from Bourland and wife to Isaac Underhill.

Third. A deed from B. L. T. Bourland & wife to Isaac Underhill, dated April 29th, 1865; which said deed is in the words and figures following, to wit:

This indenture, made the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-five, between Benjamin L. T. Bourland, of the county of Peoria, and State of Illinois, and
39 Julia P., his wife, parties of the first part, and Isaac Underhill, of said county, of the second part, witnesseth: That the said parties

of the first part, for and in consideration of the sum of nine hundred dollars (900$), lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim, unto the said party of the second part, and to his heirs and assigns, forever, all those certain tracts or pieces of land situate, lying, and being in the county of Iroquois, and State of Illinois, known and distinguished as follows, to wit: The south half of section twenty-two (22), containing three hundred and twenty acres, more or less; the southwest quarter of the northeast quarter of section twenty-six (26), containing forty acres, more or less; and the south half of the northwest quarter of said section twenty-six (26), con-
40 taining eighty acres, more or less; all in township twenty-seven north, of range thirteen west of the second principal meridian, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs, and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

B. L. T. BOURLAND. [SEAL.]
JULIA P. BOURLAND. [SEAL.]

[Stamped with rev. stamps of the value of $1, cancelled.]

41 STATE OF ILLINOIS, *City & County of Peoria, ss:*

I, Eliot Callender, a notary public in and for said city, do hereby certify that on this day personally appeared before me Benjamin L. T. Bourland and Julia P. Bourland, his wife, who are personally known to me to be the same persons described in, and who executed the foregoing deed of conveyance, and acknowledged that they had executed the same, as their free act and deed, for the uses and purposes therein expressed; and the said Julia, wife of the said Benjamin L. T. Bourland, on an examination by me separate and apart from her said husband, after the contents of said deed had been fully made known and explained to her, declared that she had executed the same and relinquished her dower to the lands and tenements therein mentioned, freely and voluntarily, without fear or compulsion of her said husband.

Witness my hand and seal notarial this 29th day of April, eighteen hundred and sixty-five.

[SEAL.] ELIOT CALLENDER, *N. P.*

42 STATE OF ILLINOIS, *Iroquois County, ss:* 10,235.

Filed for record May 23d, A. D. 1865, and duly recorded in Book No. 34, at page 313.

THOMAS VENNUM, *Clerk.*

Tax receipts.

And also the following tax receipts from the treasurer & collector of Iroquois County, Illinois, viz:

No. 1. Dated May 2, '63, for year 1862, to L. M. Peck.
No. 2. " April 11, '64, " 1863, " "
No. 3. " May 23, '65, " 1864, " Isaac Underhill.
No. 4. " May 4, '66, " 1865, " "
No. 5. " May 2, '67, " 1866, " "

Which said tax receipts are in the words and figures following, to wit:

Tax certif. No. 1.

TREASURER'S OFFICE,
Middleport, Ill., May 2nd, 1863.

STATE OF ILLINOIS, *Iroquois County:*

Received of L. M. Peck thirty-nine $\frac{20}{100}$ dollars in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1862, to wit:

43 Description.	Sec.	T'wn.	R'ge.	No. of ac's.	Valuation.	St'e &Co. t'x.	T'wn. t'x.	Di. sc. t'x.	Road t'x.	Total tax.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	298	3 13	30	53	60	4 56
W. ½ " "	"	"	"	80	298	3 13	30	53	60	4 56
E. ½ S. E. ¼	"	"	"	80	224	2 35	22	40	60	3 57
W. ½ " "	"	"	"	80	224	2 35	22	40	60	3 57
S. W. ¼ N. E. ¼	26	"	"	40	150	1 57	15	27	30	2 29
S. ½ N. W. ¼	"	"	"	80	298	3 13	30	53		3 96
W ½ lot 2 N. E. ¼	3	26	13	41 21	116	2 21	7	1 50	41	3 19
E. ½ " 1 N. W. ¼	"	"	"	40	112	1 17	6	1 45		2 68
" 2 "	"	"	"	80 65	226	2 37	13	2 93		5 43
E. ½ S. W. ¼	"	"	"	80	226	2 35	13	2 91		5 39
										39 20

GEO. KING, *Treasurer,*
By C. R. BROWN.

Tax certif. No. 2.

TREASURER'S OFFICE,
Middleport, April 11*th,* 1864.

STATE OF ILLINOIS, *Iroquois County:*

Received of L. C. Peck twenty-five and $\frac{94}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1863, to wit:

44 Description.	Sec.	T'wp.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn. t'x.	Di. sc. t'x.	Road tax.	Total tax.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	301	2 32	1 50	29	36	64	5 03
E. ½ S. W. ¼	"	"	"	80	301	2 32	1 50	29	36	64	5 03
E. ½ S. E. ¼	"	"	"	80	226	1 74	1 13	16	27	48	3 78
W. ½ SE. ¼	"	"	"	80	226	1 74	1 13	16	27	48	3 78
S. W. ¼ N. E. ¼	26	"	"	40	151	1 16	75	10	18	32	2 51
S. ½ N. W. ¼	"	"	"	80	301	2 32	1 50	29	36	64	5 03
											25 16
Costs of A. & V.											78
											25 94

GEORGE KING, *Treasurer.*

Tax certif. No. 3.

TREASURER'S OFFICE,
Middleport, May 23rd, 1865.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, by Thos. Vennum, thirty-one & $\frac{85}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1864, to wit:

Description.	Sec.	T'wn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn t'x.	Di. sc. t'x.	Road tax.	Total tax.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	320	2 40	2 40	22	80	32	6 14
W. ½ S. W. ¼	"	"	"	80	320	2 40	2 40	22	80	32	6 14
E. ½ S. E. ¼	"	"	"	80	240	1 80	1 80	17	60	24	4 61
W. ½ S. E. ¼	"	"	"	80	240	1 80	1 80	17	60	24	4 61
S. W. ¼ N. E. ¼	26	"	"	40	166	1 20	1 20	11	40	16	3 07
S. ½ N. W. ¼	"	"	"	80	320	2 40	2 40	22	80	32	6 14
Cost											1 14
											31 85

GEORGE KING, *Treasurer.*

45 *Tax certif. No. 4.*

WATSEKA, *Ill., May 4th,* 1866.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, of Peoria, Ill., thirty-seven $\frac{48}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1865, to wit:

Description.	Sec.	T wn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn t'x.	Di. sc. t'x.	Road tax.	Total tax.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	317	2 28	3 49	13	79	32	7 01
W. ½ S. W. ¼	"	"	"	80	317	2 28	3 49	13	79	32	7 01
E. ½ S. E. ¼	"	"	"	80	238	1 71	2 62	9	59	24	5 25
W. ½ S. E. ¼	"	"	"	80	238	1 71	2 62	9	59	24	5 25
S. W. ¼ N. E. ¼	26	"	"	40	238	1 71	2 62	9	59	16	5 17
S. ½ N. W. ¼	"	"	"	80	317	2 28	3 49	13	79	32	7 01
Costs											78
											37 48

P. T. RHODES, *Collector.*

W. STANLEY.

Tax certif. No. 5.

WATSEKA, *Ill., May 2d,* 1867.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, per L. Armstrong, forty-one $\frac{68}{100}$ dol-

Tax certif. No. 3.

TREASURER'S OFFICE,
Middleport, May 23rd, 1865.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, by Thos. Vennum, thirty-one & $\frac{85}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1864, to wit:

Description.	Sec.	Twn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	Twn t'x.	Di. sc. t'x.	Road tax.	Total tax.
				Ac's. 100t.		¼ cts.	¼ cts.	¼ cts.	¼ cts.	¼ cts.	¼ cts.
E. ½ S. W. ¼	22	27	13	80	320	2 40	2 40	22	80	32	6 14
W. ½ S. W. ¼	"	"	"	80	320	2 40	2 40	22	80	32	6 14
E. ½ S. E. ¼	"	"	"	80	240	1 80	1 80	17	60	24	4 61
W. ½ S. E. ¼	"	"	"	80	240	1 80	1 80	17	60	24	4 61
S. W. ¼ N. E. ¼	26	"	"	40	166	1 20	1 20	11	40	16	3 07
S. ½ N. W. ¼	"	"	"	80	320	2 40	2 40	22	80	32	6 14
Cost											1 14
											31 85

GEORGE KING, *Treasurer.*

45 *Tax certif. No. 4.*

WATSEKA, *Ill., May 4th*, 1866.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, of Peoria, Ill., thirty-seven $\frac{48}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1865, to wit:

Description.	Sec.	T wn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn t'x.	Di. sc. t'x.	Road tax.	Total tax.
				Ac's. 100t.		¼ cts.	¼ cts.	¼ cts.	¼ cts.	¼ cts.	¼ cts.
E. ½ S. W. ¼	22	27	13	80	317	2 28	3 49	13	79	32	7 01
W. ½ S. W. ¼	"	"	"	80	317	2 28	3 49	13	79	32	7 01
E. ½ S. E. ¼	"	"	"	80	238	1 71	2 62	9	59	24	5 25
W. ½ S. E. ¼	"	"	"	80	238	1 71	2 62	9	59	24	5 25
S. W. ¼ N. E. ¼	26	"	"	40	238	1 71	2 62	9	59	16	5 17
S. ½ N. W. ¼	"	"	"	80	317	2 28	3 49	13	79	32	7 01
Costs											78
											37 48

P. T. RHODES, *Collector.*

W. STANLEY.

Tax certif. No. 5.

WATSEKA, *Ill., May 2d*, 1867.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, per L. Armstrong, forty-one $\frac{68}{100}$ dol-

lars, in full for his State, county, town, school, road, and other taxes on the following property in said county, for the year 1866, to wit:

Description.	Sec.	T'wn.	R'ge.	Valuation.	State tax.	T'wn tax.	Di. sc. t'x.	Road tax.	Co. & b'ty tax.	Total tax.
					$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W.	22	27	13	466	3 26	19	1 86	64	7 92	13 87
W. ½ S. W.	"	"	"	388	2 72	16	1 55	64	6 59	11 66
S. ½ N. W.	26	"	"	544	3 81	22	2 18		9 25	15 46
Advertising.										69
										$41 68

P. T. RHODES, *Collector.*

46 Stating that the object of offering said evidence was to show title to said premises in controversy, and to require of said plaintiff the amount of said taxes & costs paid, as shown by the same, in case said plaintiff questioned said title of said Underhill according to the statute, &c. But the court was of opinion that the said defendant had not brought himself within the said statute of Feb. 21, 1861, & for the reason, among others, that he must first shew there was a judgment as the foundation of said tax sale and deed, and so ruled; to which ruling the defendant then and there excepted.

This was all the evidence in the case; and the court left it to the jury to determine as to the death of John M. Patton, and the identity of the devisee under such will with the plaintiff; to which instruction the defendant then and there excepted.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed May 30, 1868.

WM. H. BRADLEY, *Clk.*

47 On this day, to wit, the third day of July, in the adjourned May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

PEGGY F. PATTON *vs.* ISAAC UNDERHILL. } Ejectment.

The motion of the defendant, heretofore entered, for a new trial of this cause, not being urged, the same is overruled by the court. It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant possession of the real estate and premises aforesaid described, according to the force, form, and effect of her said recovery; and that she have a writ of possession therefor; and that she also have and recover of the defendant the said sum of one cent, her damages so as aforesaid assessed, together with her costs and charges by her about her suit in this behalf expended, amounting to the sum of thirty-three dollars and fifty-five cents; and that she have execution therefor.

48 On the eighth day of July, A. D. 1868, came the said defendant, Isaac Underhill, and filed a bond for appeal; which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

PEGGY F. PATTON
vs.
ISAAC UNDERHILL.

Know all men by these presents, that we, Isaac Underhill and Charles Holland, are held and firmly bound unto the above-named Peggy F. Patton in the penal sum of one thousand dollars, to be paid to the said Peggy F. Patton, her executors, and administrators; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 3d day of July, A. D. 1868.

Whereas the above-named Peggy F. Patton has prosecuted a writ of error to the Supreme Court of the United States, to reverse the
49 judgment rendered in the above-entitled suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Isaac Underhill shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, and especially shall pay the rents and profits of the premises in controversy in case he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

ISAAC UNDERHILL. [SEAL.]
CHAS. HOLLAND. [SEAL.]

STATE OF ILLINOIS, *County of Cook:*

Charles Holland, being sworn, says that he is worth five thousand dollars over and above all just debts & liabilities; & further saith not.

CHAS. HOLLAND.

Sworn to & subscribed this 3d July, 1868.

E. A. DRUMMOND,
U. S. Com'r.

Approved:

THOMAS DRUMMOND.

Endorsed: Filed July 8, 1868.

WM. H. BRADLEY, *Clk.*

50 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said Peggy F. Patton is plaintiff, and said Isaac Underhill is defendant, as the same appears of record remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in the city of Chicago, in said district, this fifth day of December, A. D. eighteen hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-ct. int. rev. stamp, canceled: W. H. B., Dec'b'r 5, 1868.]

51 Circuit court of the United States, northern district of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Peggy F. Patton, plaintiff, and Isaac Underhill, defendant, a manifest error hath happened to the great damage of the said Isaac Underhill, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme
52 Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Circuit court U. S., northern dist. of Ill's. Peggy F. Patton vs. Isaac Underhill. Writ of error.

53 UNITED STATES OF AMERICA, *ss:*

To Peggy F. Patton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the 8th circuit and northern district of Illinois, wherein Isaac Underhill is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness this 14th day of July, A. D. 1868.

THOMAS DRUMMOND.

(In pencil:) Rec'v'd copy of the above, July 21, 1868.

H. M. WEAD,
Attorney for Patton.

(Indorsed:) U. S. Supreme Court. Isaac Underhill vs. Peggy F. Patten. In error. Citation to Peggy F. Patten.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 195—LYTTLE *vs.* HERNDON.

" 196—LONG *vs.* PATTON.

" 197—UNDERHILL *vs.* HERNDON.

" 198—STURTEVANT *vs.* HERNDON.

" 199—UNDERHILL *vs.* PATTON.

The defendants in error claim under a patent from the United States to Robert Hord, dated February 4, 1842.

In cases 195, 197, and 198, the patent from United States to Hord was objected to because of an erasure and interlineation. The court overruled the objection, and there was an exception. The alteration claimed was the erasure of the word "six" and the interlineation of the word "seven." The court left it to the jury to say whether there had been an interlineation.

In each of the cases objection was made to the deed from Robert Hord, on the ground that it was not duly acknowledged or proved. The objection was overruled and exception taken. (No. 195, p. 7; No. 197, p. 8; No. 198, p. 8; No. 199, p. 7.)

In Nos. 196 and 197 objection was made to a copy of the will of John M. Patton containing a devise to the plaintiff,

(No. 196, p. 10; No. 199, p. 10,) because the same was not duly proved, and because the death of testator was not proved. Objection overruled and exception, the court leaving it to the jury whether the said Patton was dead.

In each case the defendant below (plaintiff in error) offered in evidence, first, a tax deed from the sheriff of Iroquois county, Illinois, to L. M. Peck, dated July 1, 1864; second, a deed of same date from L. M. Peck and wife to B. L. T. Bourland; third, a deed of April 29, 1865, from Bourland and wife to Isaac Underhill, and tax receipts showing the payment of the taxes upon said land for five successive years; stating that the object of offering the same in evidence was to recover the amount of taxes paid upon the land in suit in said case under the terms of the statute enacted by the legislature of the State of Illinois of February 21, 1861, in case said deed from said sheriff was questioned title by said plaintiff, and to defeat the plaintiff by questioning said deed as title if he refuse to pay the redemption money according to said statute. But the court was of opinion that the defendant had not brought himself within the statute, and for the reason, among others, that he must show there was a judgment as the foundation of said tax sale and deed, and so ruled, to which ruling the defendant then and there excepted.

POINTS AND AUTHORITIES.

In the State of Illinois it has always been held that where interlineations or alterations occur in a deed it is presumed that they were made after it was executed, and the party claiming under it must explain them.

Montag *vs.* Linn, 23 Ill., 551.
Walters *vs.* Short, 5 Gilm., 252.
Hodge *vs.* Gilman, *et al.*, 20 Ill., 441.

So held in—

Prevost *vs.* Gratz, Pet. C. C. R., 364.
Devoy *vs.* Mayor, 35 Barb., 264.

II. The point that the deed from Robert Hord to John M.

Herndon, which is part of the chain of title in cases 195, 197, 198, and the deed from Robert Hord to John M. Patton, which is relied upon in 196 and 199, are not properly acknowledged under the laws of Illinois or Virginia is fully made in the record. I have had no time to examine the point, and submit it as it stands in the record. There must be an entire conformity with the requisitions of the law of Illinois or of Virginia.

Montag *vs.* Linn, 19 Ill., 399.
Adams *vs.* Berhap, 19 Ill., 395.

There is no acknowledgment in conformity with the law of Illinois. The justices do not certify that the person making the acknowledgment was personally known to them.

Montag *vs.* Linn, 19 Ill., 399.

The certificate of conformity in 196 and 199 is made upon a copy, and not upon the original.

III. The point is made in the record that the copy of the will of John M. Patton, in cases 196 and 199, was not properly authenticated. I submit this point also as it appears in the record, having prepared these points to answer the rule in the unexpected absence of counsel who tried the case. I have no time to examine the question here presented.

IV. The last point is one which I have heretofore considered, and which appears to me to be the main point in the case, and which, so far as I have known, has always been in our State courts ruled differently from the ruling of the circuit court in this case, and it is a point of great practical interest and importance, inasmuch as it involves a construction of a statute affecting the public and many private interests.

I think the circuit court erred in ruling that the defendants had not brought themselves within the statute of February 21, 1861, so as to require the plaintiffs to pay the amount of taxes and costs paid by the defendants and their grantors, respectively, upon the lands in controversy, before they

should be allowed to question the validity of the deed from H. O. Henry, the sheriff of Iroquois county, to L. M. Peck.

The statute is as follows:

"All deeds hereafter made by the proper officer in pursuance of sales of real estate for the non-payment of taxes shall be held to be null and void, if it be shown that said taxes had been paid before the sale, or that said real estate was not subject to taxation, or that it had been redeemed from said sale, or if notice required by the constitution was not given, or that the description of said land was not sufficiently definite; and the validity of all such deeds hereafter made by the proper officers, for real estate sold for the non-payment of taxes, shall not be questioned in any suit or controversy in this State for any other cause, unless the party wishing to contest the same shall tender to the claimant under said tax deed, or deposit in the court in which such suit is pending, for his use, the amount of the redemption money now provided for by law, with ten per cent. per annum interest thereon from the date of said deed to the time of said tender or deposit; and after said tender or deposit is made the validity of said deed may be questioned in the same manner and to the same extent as now provided by law."

The tax deed had been made by the proper officer. The sale for taxes was made long after the passage of the act of February 21, 1861. The defendants had not only paid the taxes for which the land was sold, but the taxes for five subsequent years. The plaintiffs could not recover if this tax deed was a valid deed. The statute provides that the validity of this deed should not be questioned in these suits unless the plaintiffs should tender to the claimants under such deed, or deposit in the court in which the suit was pending, for their use, the amount of the redemption money provided by law, with interest at ten per cent.

The question is not whether, independent of the statute, a legal title was vested in the grantee by virtue of the sheriff's deed, as is supposed in brief of defendant in error, but the

question is as to the right of the plaintiffs to question the sheriff's deed until they had paid the taxes. Unless the statute is unconstitutional and void, it seems to cover the case. If there was a valid judgment and a valid execution, then the deed would make a valid and indefeasible title. And so if the plaintiff was not required to question the validity of the tax deed until a perfectly valid judgment and execution were shown, he would not be required to do so until it was shown to be perfectly useless.

To show a judgment and execution which are not regular and valid would certainly not help the case of the party claiming under the tax title, and so the statute, by the ruling of the court, is deprived of any effect whatever.

If it be said that if a judgment and execution to support the sheriff's deed were shown the party could not question the deed, even if the judgment and execution were irregular and invalid, that construes the statute to mean that the validity of the judgment and execution shall not be questioned. Whereas the statute says that the validity of the DEED shall not be questioned. If the judgment and execution are regular and valid, the validity of the deed cannot be questioned.

The question seems to be narrowed down to this: Is the validity of a collector's deed questioned by denying that there is any judgment and execution to support it? If it is, then the existence of such judgment and execution cannot be denied until the taxes are paid.

Is the statute constitutional? No reason can be urged against its validity that cannot be urged with equal force against any statute of the State which makes a tax collector's deed evidence of any fact recited in the deed. Our statute makes a collector's deed conclusive evidence of certain facts and *prima facie* evidence of certain other facts.

Gross Stat., p. 563, §§ 14, 15.

If this cannot be done, the collection of taxes will be a matter of extreme difficulty. If it can be done, it follows, I think, that the collector's deed shall be conclusive evidence

of every fact necessary to its validity until the party seeking to set it aside shall pay the taxes imposed by law.

No case can be found in our State court that conflicts with the views here expressed.

The case of Conway *vs.* Cabell, 37 Ill., 82, cited by defendant, only decides that this law is not retrospective; but seems to admit that it does apply to all cases where the tax sales were made subsequent to the passage of the act, as in these cases.

The rule of construction that requires statutes, by the operation of which one man's estate may be transferred to another for a nominal consideration, to be strictly and exactly construed, does not obtain in the construction of this statute of February 21, 1861, the object of which is only to require every man to pay his taxes legally assessed, which he is both legally and morally bound to do; and only provides that a man who has acted upon the faith that the officers of the State had performed their duty shall be protected from loss, and the owner of the land be required to pay his taxes, which he may do at any time while the case is pending in court. By a constuction of this statute such as I contend for the owner of the land is simply required to pay his taxes to the person who has paid them to the State; and I submit that such construction is in accordance with the plain meaning of the statute, and that any other construction makes the statute wholly inoperative.

B. C. Cook,
Of Counsel for Plaintiffs in Error.

Supreme Court of the United States.

DECEMBER TERM, 1869.

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 195. LITTLE *v.* HERNDON.
196. LONG *v.* PATTON.
197. UNDERHILL *v.* HERNDON.
198. STURTEVANT *v.* HERNDON.
199. UNDERHILL *v.* PATTON.

CONWAY ROBINSON,
Counsel for defendants in error.

H. Polkinhorn & Co., prs., D St., bet. 6th and 7th Sts.

Supreme Court of the United States.

DECEMBER TERM, 1869.

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 195. LITTLE *v.* HERNDON.
196. LONG *v.* PATTON.
197. UNDERHILL *v.* HERNDON.
198. STURTEVANT *v.* HERNDON.
199. UNDERHILL *v.* PATTON.

STATE OF THE CASES.

The defendants in error claim under patents from the United States to Robert Hord, dated November 1, 1839; and under deeds from Hord dated February 4, 1842. In each case the plaintiff in error is sued for such of the lands granted by those deeds and patents as he has entered into and withheld possession of from the plaintiff; and in each, issue was joined on the plea of not guilty.

In the first case, (No. 195,) one of the patents to Hord was objected to because of an erasure and interlineation, (p. 5;) but the Court overruled the objection and admitted the instrument in evidence, and left it to the jury to determine whether there was any alteration of said patent; to which ruling the defendant excepted. There was a like ruling in the third case, (No. 197,) p. 5; and in the fourth case, (No. 198,) p. 5.

In each of the five cases an objection to the deed from Hord, on the ground that it was not duly acknowledged or

proved, was made and overruled, (No. 195, p. 7; No. 196, p. 7; No. 197, p. 8; No. 198, p. 8; No. 199, p. 7.)

In No. 196 and No. 199, the deed from Hord being to John M. Patton, objection was made to the admission in evidence of a copy of his will containing the devise from him to the plaintiff, (No. 196, p. 10, and No. 199, p. 10;) but the objection was overruled, and it was left to the jury to determine as to the death of John M. Patton and the identity of the devisee under such will with the plaintiff; to which instruction there was exception, (p. 17.)

In each of the five cases, the plaintiff in error offered in evidence—1, a deed of the 1st of July, 1864, from the sheriff of Iroquois county, Illinois, to L. M. Peck; 2, a deed of same date from L. M. Peck and wife to B. L. T. Bourland; 3, a deed of April 29, 1865, from Bourland and wife to Isaac Underhill; and certain tax receipts from the treasurer and collector of Iroquois county, Illinois, stating that the object of offering the same in evidence was to recover the amount of taxes and costs paid upon the land in suit under the terms of the statute of Illinois of February 21, 1861, in case said deed from the sheriff was questioned as title by plaintiff, and to defeat the plaintiff by using said deed as title, if he refused to pay the same according to said statute; but the Court was of opinion that the defendant had not brought himself within said statute, and for the reason, among others, that he must first show there was a judgment as the foundation of said tax sale and deed, and so ruled; to which ruling the defendant excepted.

In each case verdict and judgment were rendered for plaintiff. In the first case the action and the judgment are against Henry Lyttle; the bond is in no penal sum. It recites that James F. Lytle, who is sued by the name of Henry Lytle, has prosecuted a writ of error, and the sigature is James F. Lytle; the writ of error is in the name

of Henry Lyttle; and the citation is in the name of J. F. Lyttle.

POINTS AND AUTHORITIES.

I. "'Tis to be presumed that an interlining, if the contrary be not proved, was made at the time of making the deed." *Trowell* v. *Castle*, 1 Keb., 22; 12 Vin. Abr. p. 58; 13 Id., p. 41; note 136 of Harg. & But. to Co. Lit., 225*b*. In 4 Geo. 2, where the power was extended by an interlineation in these words, "to grant, sell, and demise, or," *Reynolds*, C. B., said: "There is no proof when these words were interlined, or that they were inserted by the direction of Mr. T.; therefore I must look upon them as if they had been originally incorporated in the body of the deed." *Fitzgerald and Wife* v. *Fauconberg, &c.*, Fitzgib., 214; 4 Cruise's Dig., tit. 32, ch. 26, § 10. This Court said in 1815: "The fact that there is an erasure or interlineation apparent on the face of the deed does not, of itself, avoid it. To produce this effect, it must be shown to have been made under circumstances that the law does not warrant." *Speake, &c.* v. *U. S.*, 9 Cranch, 37. The Court of Appeals of Maryland, in 1820, said: "It is incumbent on the party who wishes to avoid a deed by its erasure to prove that the alteration was made after its execution and delivery." *Wickes* v. *Caulk*, 5 Har. & J., 41. With this Court (*Coulson* v. *Walton, &c.*, 9 Peters, 78;) there is also concurrence in Connecticut, *Bailey* v. *Taylor*, 11 Conn., 534, 535; and in the Court of Queen's Bench. In delivering its judgment, in 1851, Lord *Campbell*, C. J., referring to note 136 of Harg. & Butl., to Co. Lit., 235*b*, said: "This doctrine seems to us to rest upon principle. A deed cannot be altered after it is executed, without fraud or wrong; and the presumption is against fraud or wrong." *Doe dem. Tatum* v. *Catomore*, 16 Adol. & El., N. S., 745.

The plaintiff has certainly no right to complain that the Court, while admitting the patent in evidence, left it to the jury to determine whether there was any alteration of it. In Lord *Coke's* day, judges left "it to the jurors to try whether the erasing or interlining were before the delivery." Co. Lit., 225*b*; Bull, N. P., 267. And judges have so done in this country, when they saw any occasion for so doing. *Hatch* v. *Hatch*, 9 Mass., 312; *Barrington* v. *Bank of U. S.*, 14 S. & R., 323; *Heffelfinger* v. *Shutz, &c.*, 16 Id., 44; *Lewis, &c.*, v. *Payn*, 8 Cow., 71; *Jackson* v. *Jacoby*, 9 Id., 126; *Jackson* v. *Osborn*, 2 Wend., 555; *Smith* v. *McGowan*, 3 Barbour, 408; *Acker* v. *Ledyard*, 8 Id., 516.

The distinction in England (as to erasure or interlineation) between a deed and a negotiable instrument, seems not to have been adverted to by this Court in *U. S.* v. *Linn*, 1 How., 111. There is no occasion to examine it in the present case. For, although bonds or other executory instruments which are merely obligatory on the person may sometimes have their effect defeated by intentional cancellation, yet the destruction or cancellation of a deed which has passed an estate or interest will not so avoid the deed as to divest that estate or interest. 3 Prest. on Abstr., 103; 5 Rob. Pract., ch. 73, § 3, p. 763.

II. By reference to the first volume of the Revised Code of Virginia of 1819, p. 363, ch. 99, § 7, it appears that the acknowledgement of the deed from Hord is in exact conformity with the laws of Virginia—(the State where the acknowledgment was taken)—at the time when the acknowledgment purports to have been made. Under that section a deed could be admitted to record in Virginia without any other evidence of the official character of the persons taking the acknowledgment than appeared on the face of their own certificate. But here there is, in fact, as proper evidence of that official character as could well

be desired, to wit: the certificate of the clerk of the corporation court, under the seal of that court. Even without such certificate, it was, under the statute of Illinois, enough that the deed was acknowledged in conformity with the laws of the State in which the deed was executed to authorize it to be admitted to record in the county where the land was situated; and authorize it, after being so recorded, to be used in evidence without further proof of the execution thereof. See Sess. Laws of Illinois, 1847, p. 47, § 3; and *Secrist* v. *Green*, 3 Wallace, 750.

III. John M. Patton was one of the revisors of the Code of Virginia, and, according to that Code, his will is in writing and signed by him, and wholly written by him, (ch. 122, § 4, p. 516, of edition of 1849,) and has been admitted to record, (Id. § 34, p. 521.) A copy of it, authenticated according to the act of Congress, (1 Stat. 122,) has been recorded in Illinois. The copy is accompanied by a certificate of the proper officer that said will was duly executed and proved, agreeably to the laws and usages of the State in which it was executed, and under the statute of Illinois is good and available in law in like manner as a will made and executed in that State. Stat. of Illinois, (compiled by Purple,) part 2, p. 1192, § 8, of 2d ed., (1857.) Therefore the Court below was right in overruling the objection that the instrument "was not properly proved"—right in holding that there was sufficient proof that the "will was probated," and "where it was probated."

The objection that the evidence "was immaterial and irrelevant without proof of the death of the alleged decedent," might well have been overruled, simply upon what appears in the authenticated copy; but the Court, out of abundant caution, "left it to the jury to determine as to the death of John M. Patton, and the identity of the de-

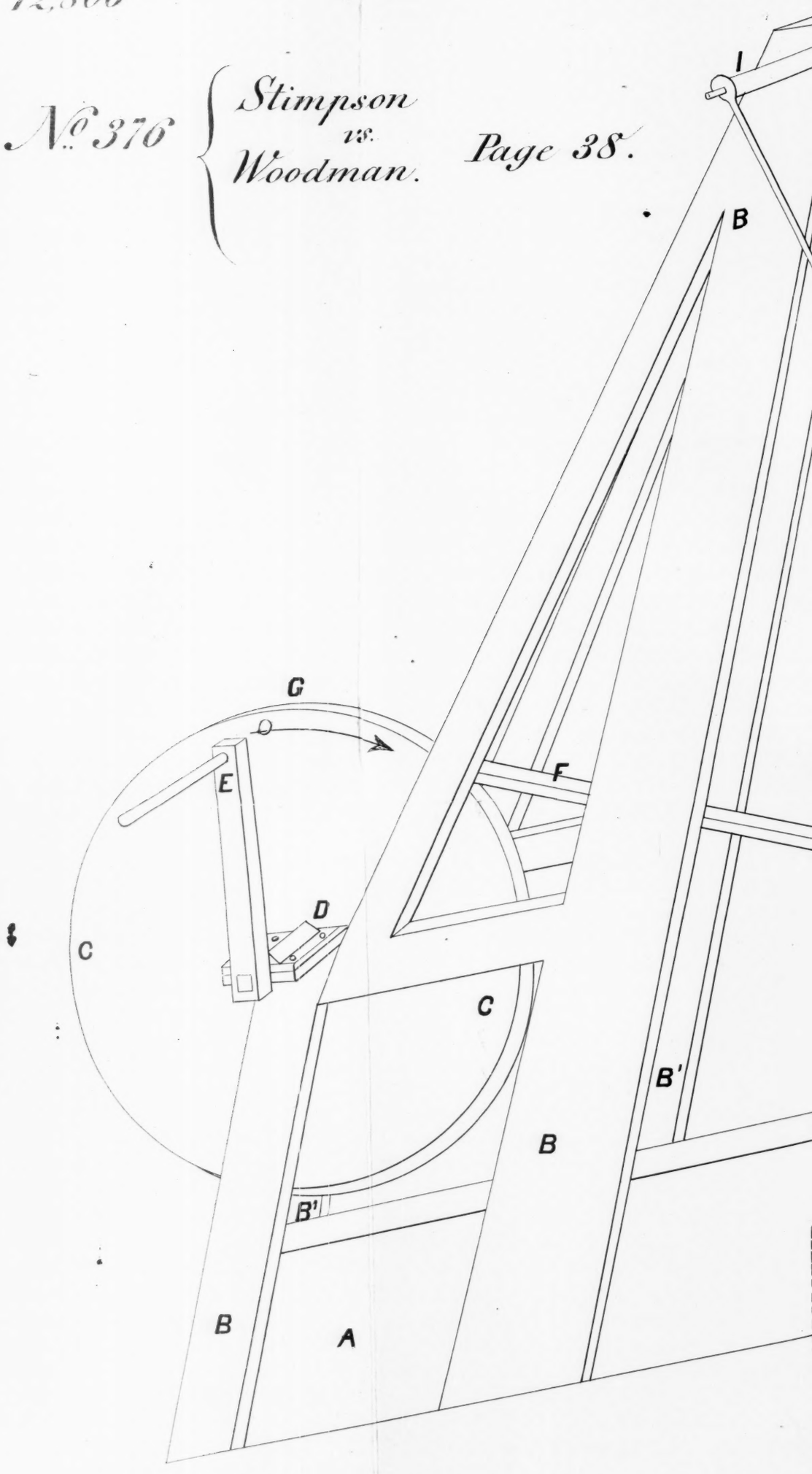
visee under said will with the plaintiff;" which was certainly as much as the defendant could reasonably ask.

IV. There has not been such valid judgment and precept (Blackwell on tax titles, 229) as was shown in *Spellman* v. *Curtenius*, 12 Illinois, 411; *Marsh* v. *Chesnut*, 14 Id., 224; and recognized as necessary in *Brown* v. *Hogle*, 30 Id., 141; *Charles* v. *Waugh*, 35 Id., 323; *Altes* v. *Hinckler*, 36 Id., 267; *Conway* v. *Calle*, 37 Id., § 8. Although a deed executed by the collector may, under the statute, be *prima facie* evidence of certain facts, yet the decisions establish clearly that, upon a tax sale, "the title acquired by a collector's deed" is nothing until it is first shown "there was a judgment as the foundation of said tax sale and deed."

CONWAY ROBINSON,
Counsel for defendants in error.

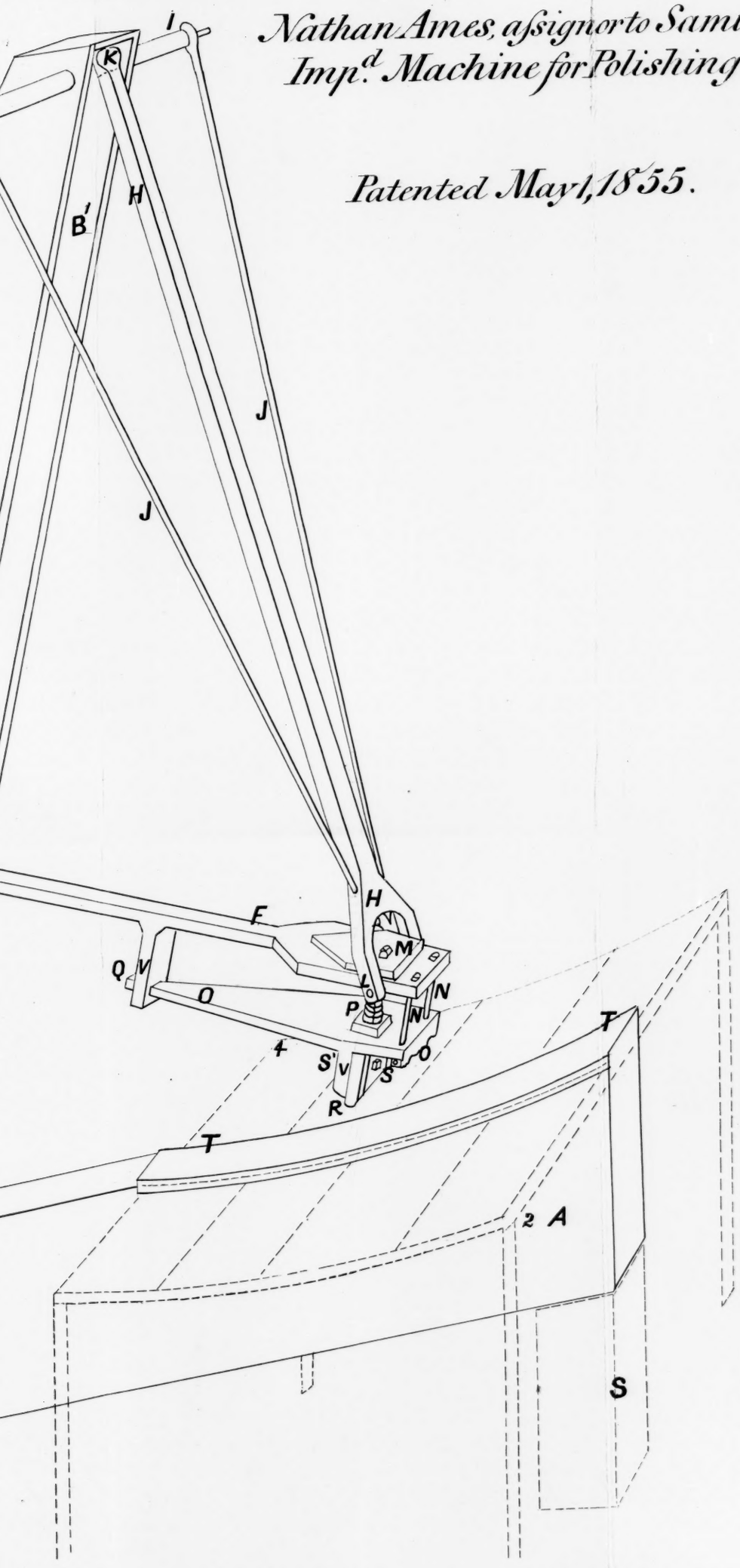
No. 12,806

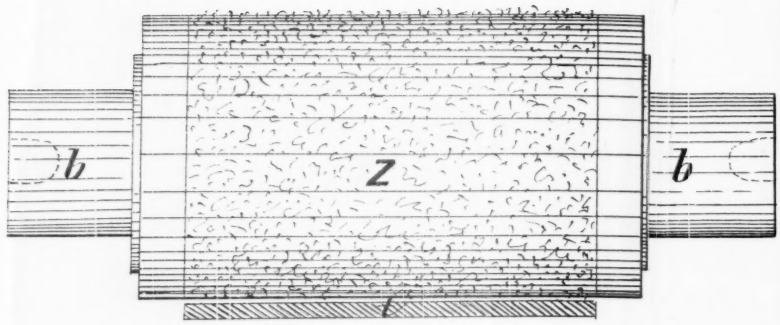
No. 376 { Stimpson vs. Woodman. Page 38.

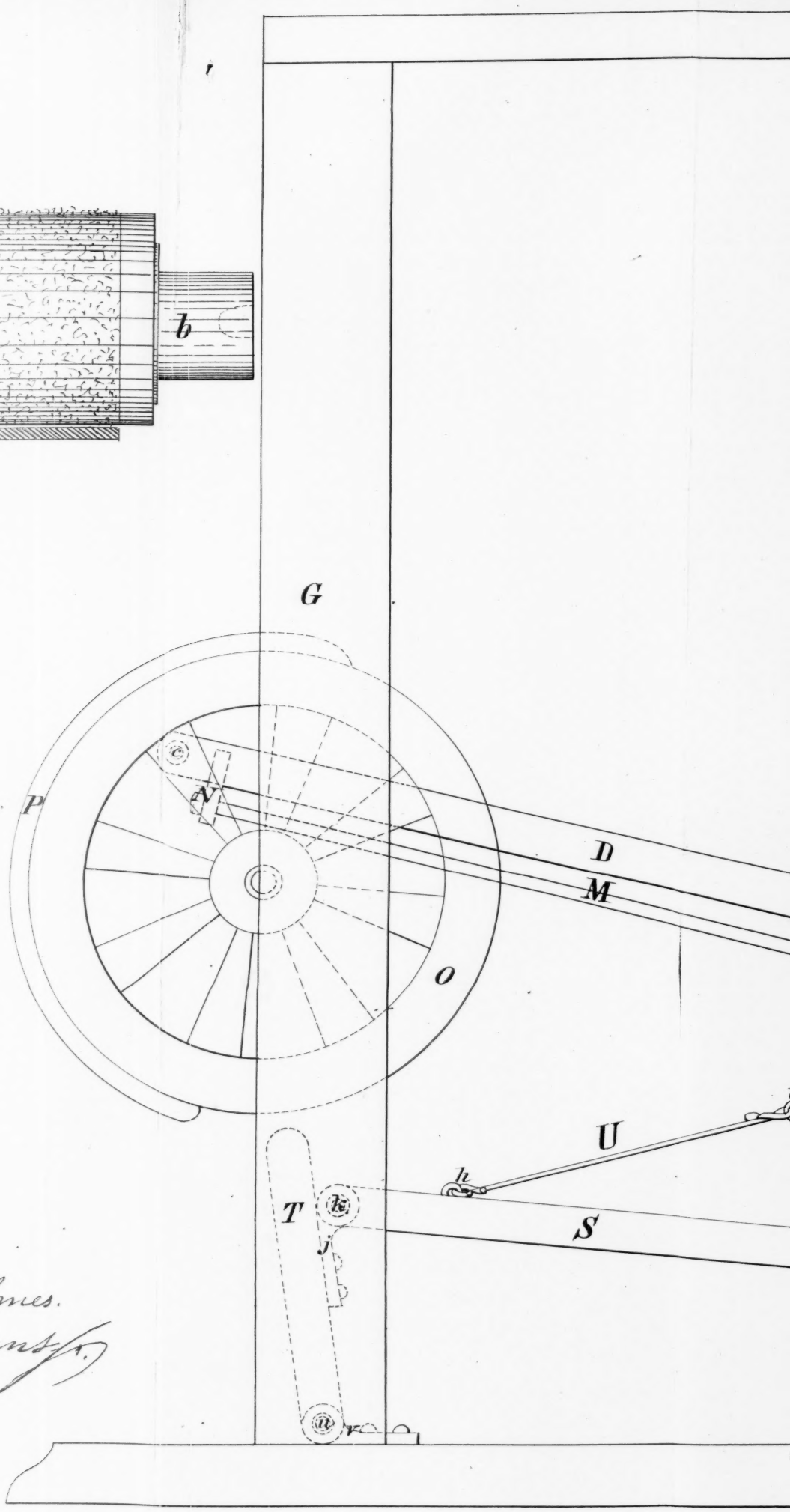


Nathan Ames, assignor to Samuel Green.
Impd. Machine for Polishing Leather.

Patented May 1, 1855.



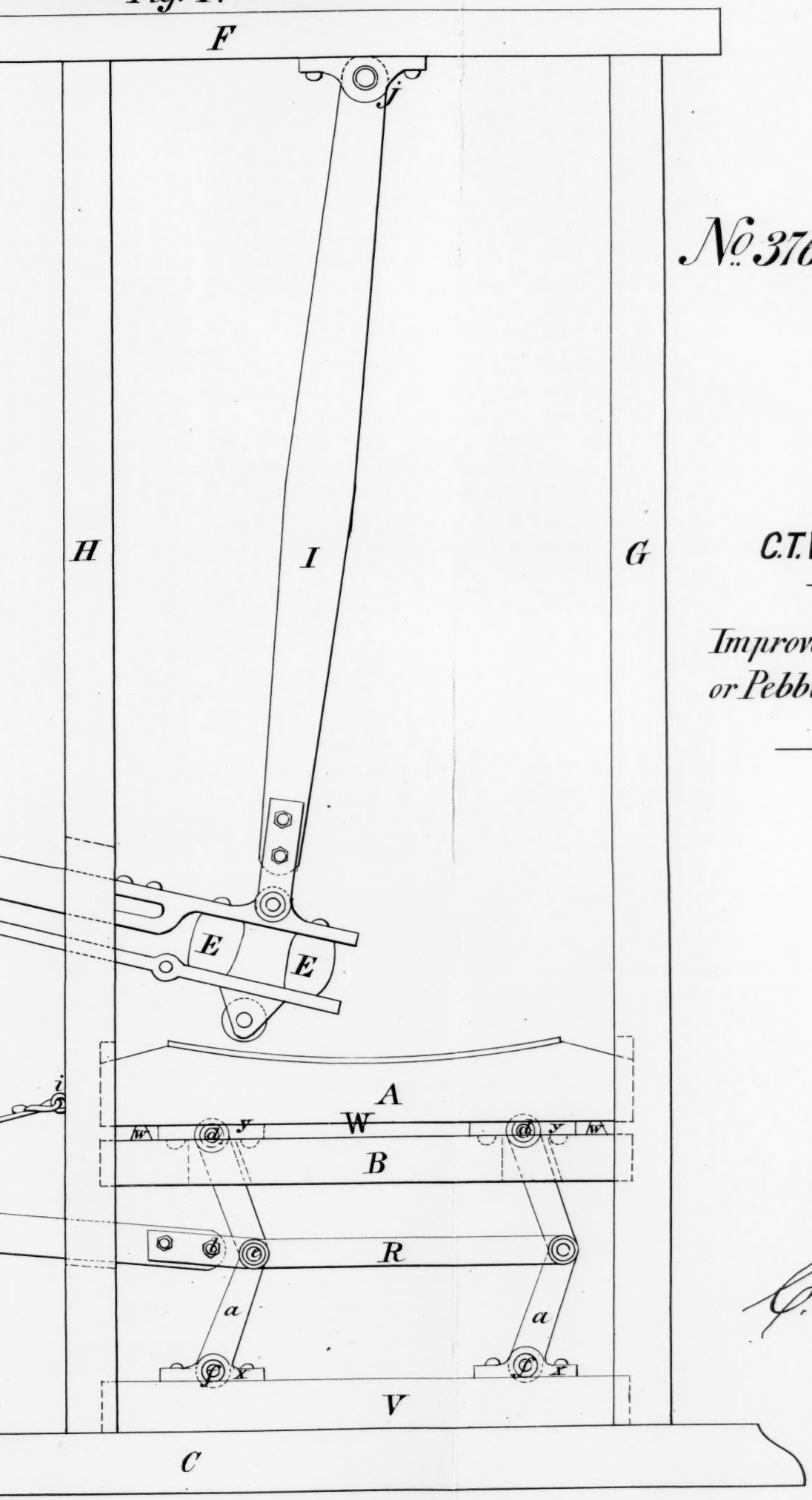




Witnesses—
N. Ames.
N. Evans Jr.

Connelly Attached
Edward Bibb
Draughtsman U.S. Patent Office.

Fig. 1.



No. 376 { *Stimpson* *vs:* *Woodman.*

Page: 45.

No. 1

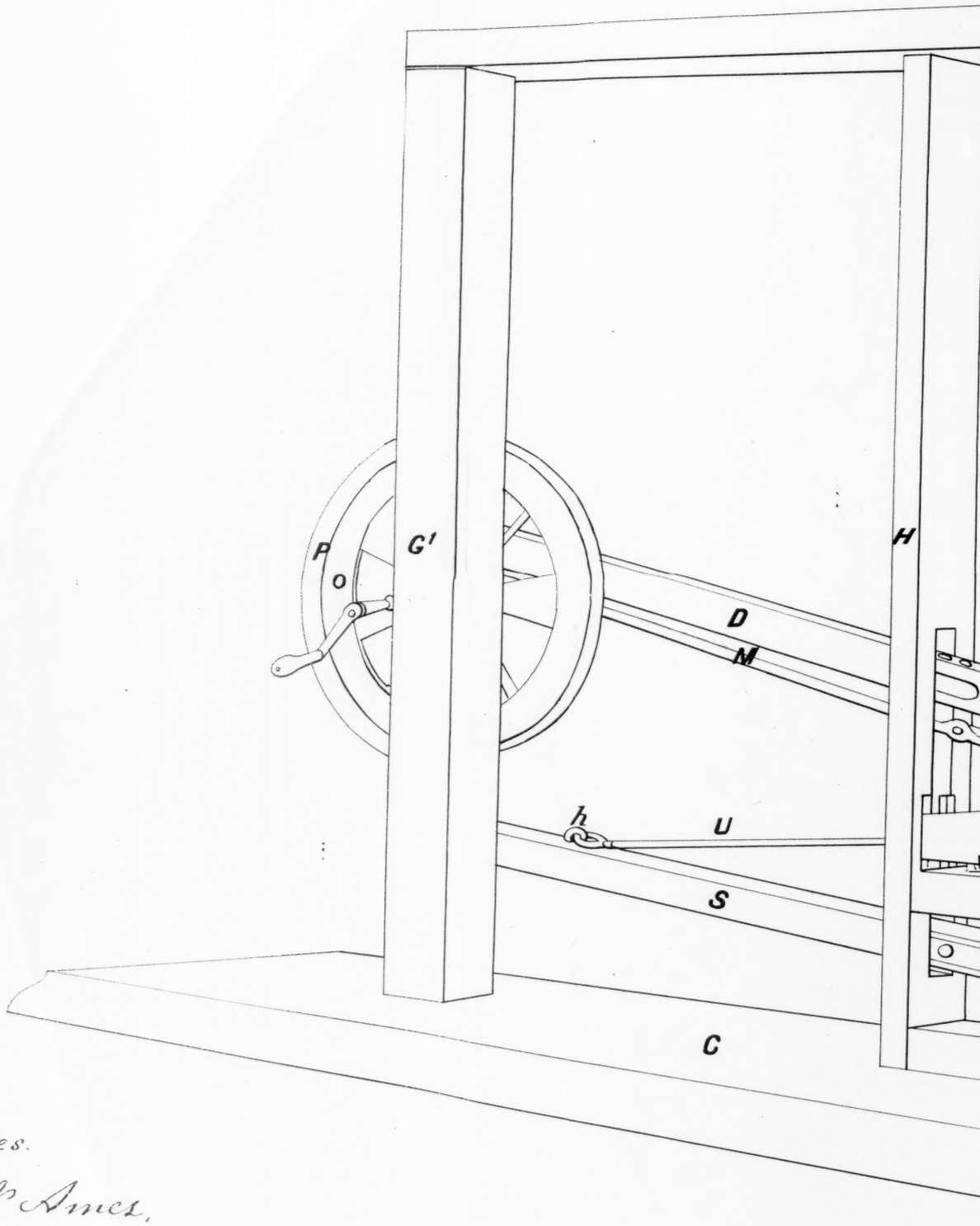
C.T. WOODMAN'S

Improvement in Boarding or Pebbling of Leather.

Inventor—

C. T. Woodman.

Fig. 2.



Witnesses.

S. Ames.

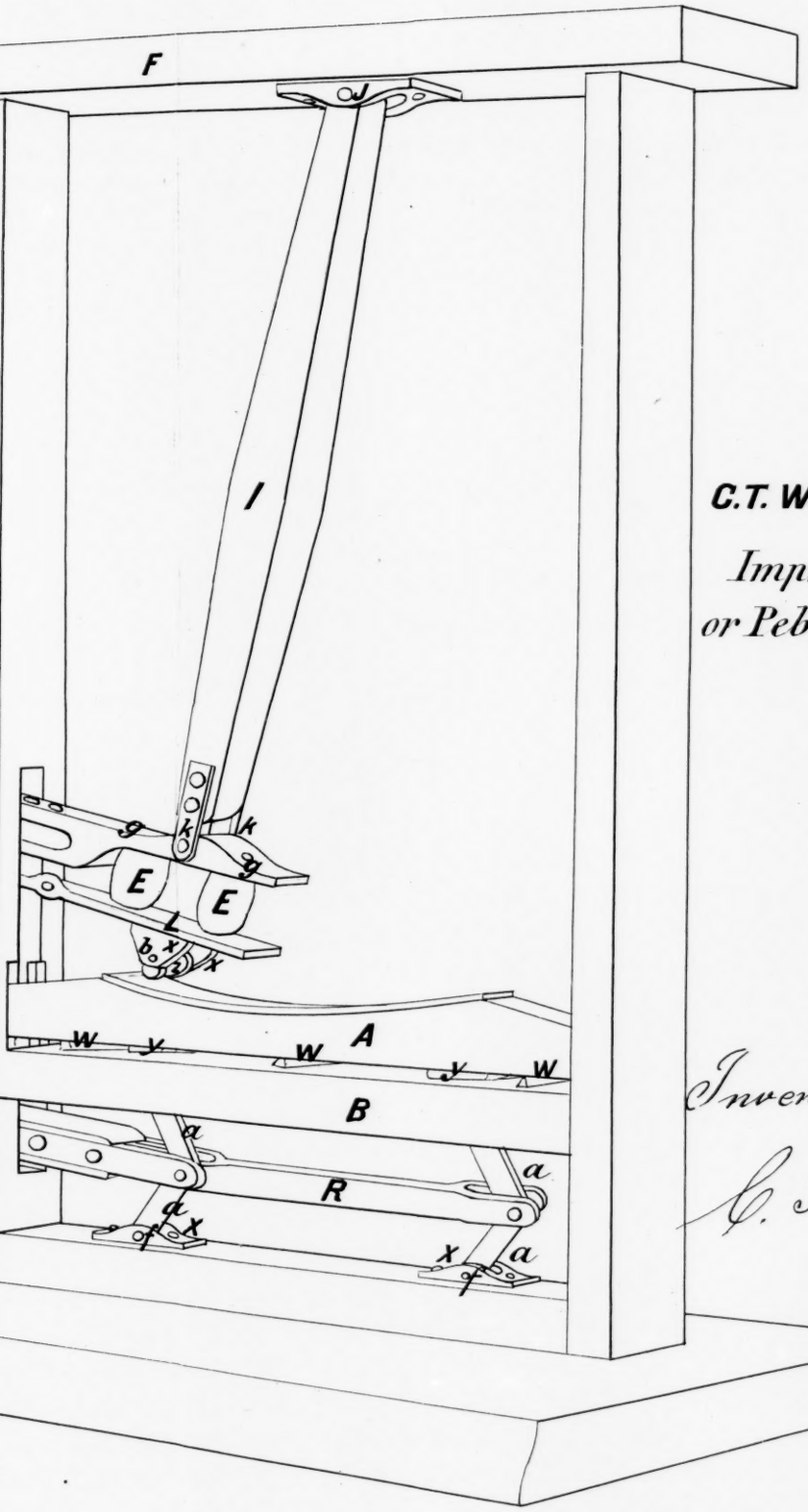
N. Evans Jr.

No 376 { Stimpson vs. Woodman,

Page 45.

No 2.

2.



C.T. WOODMAN'S

Improvement in Boarding or Pebbling of Leather.

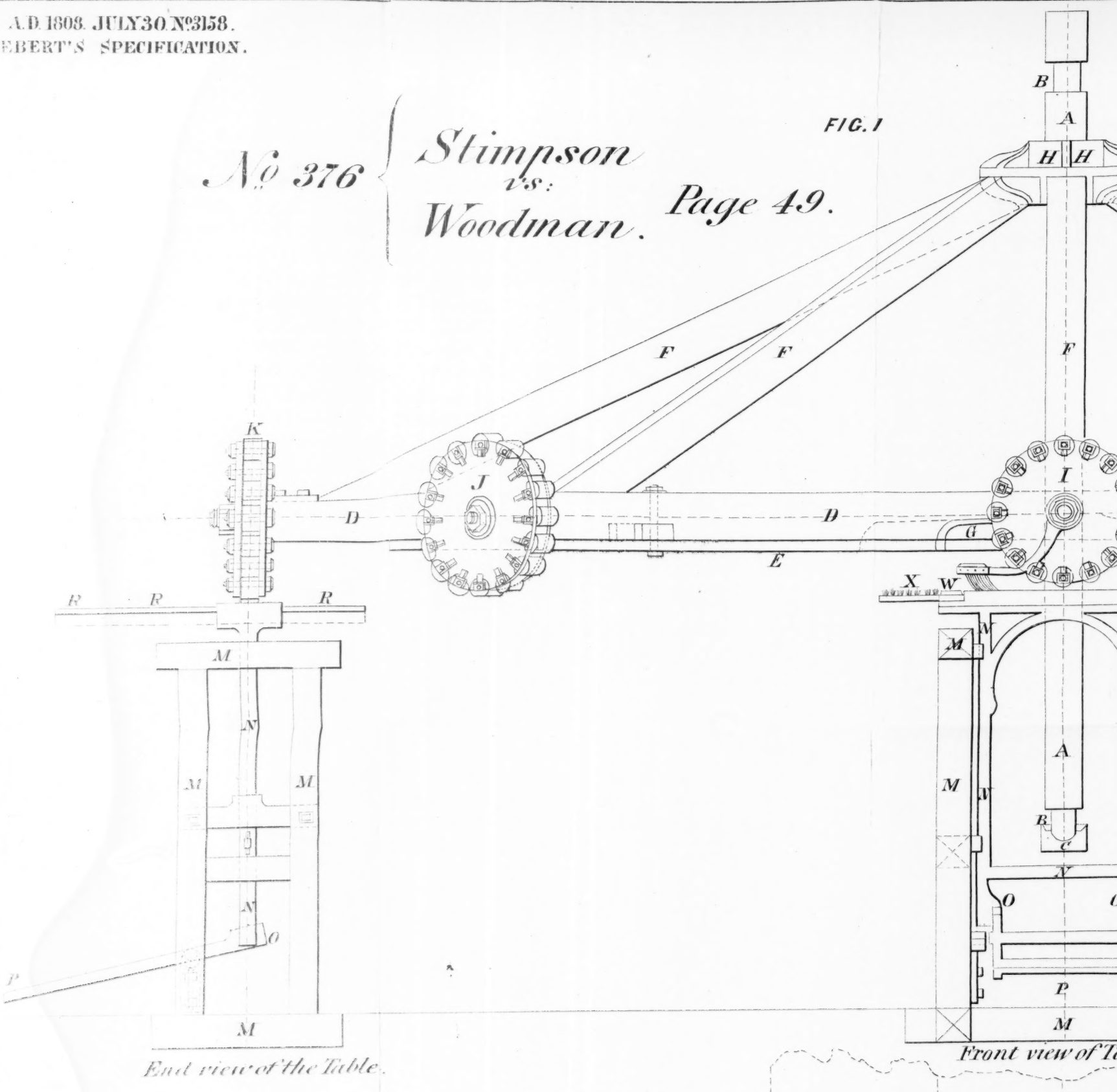
Inventor-

C. T. Woodman

A.D. 1808. JULY 30. N°3158.
HEBERT'S SPECIFICATION.

No 376 { Stimpson vs: Woodman. Page 49.

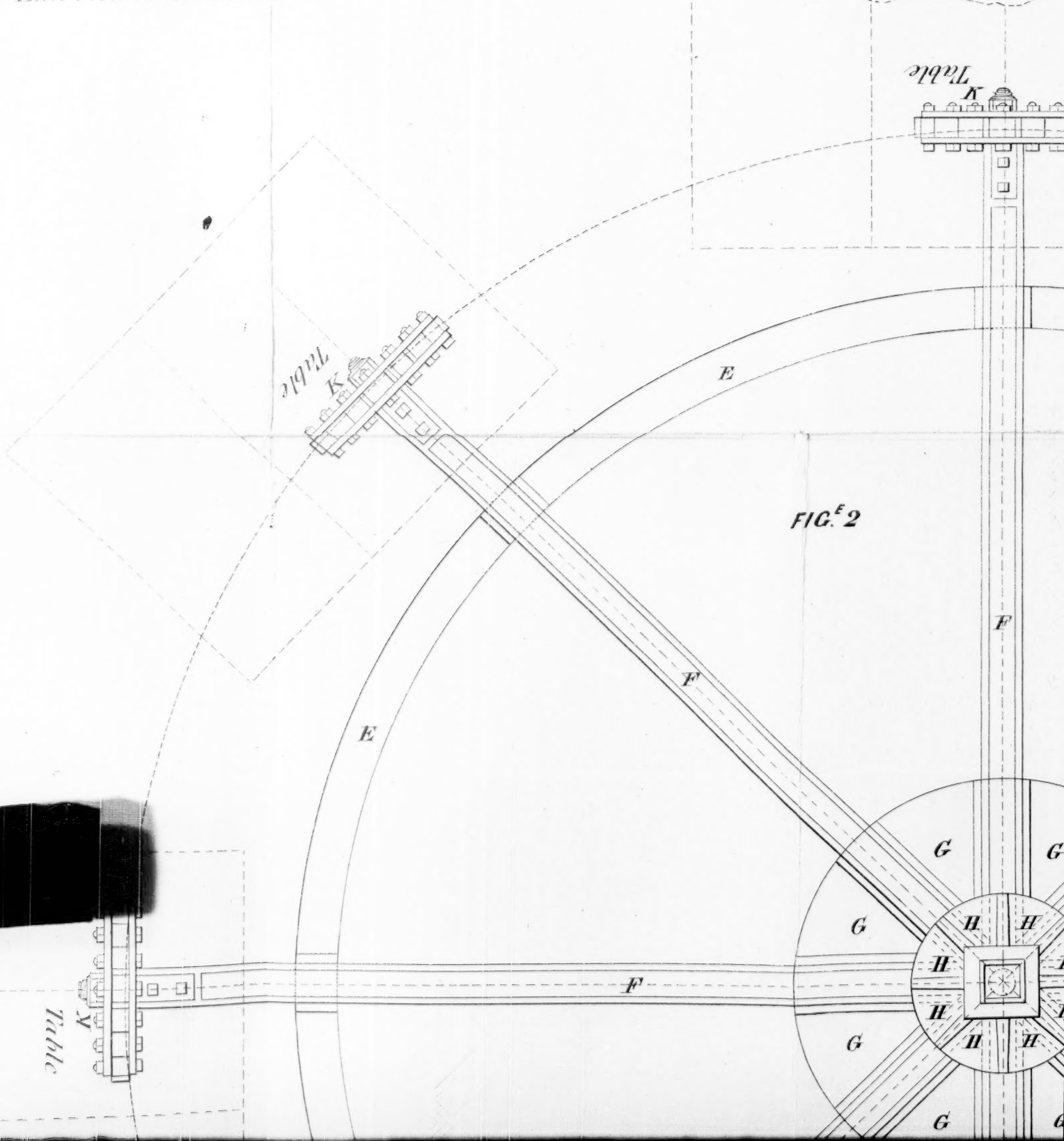
FIG. 1



End view of the Table.

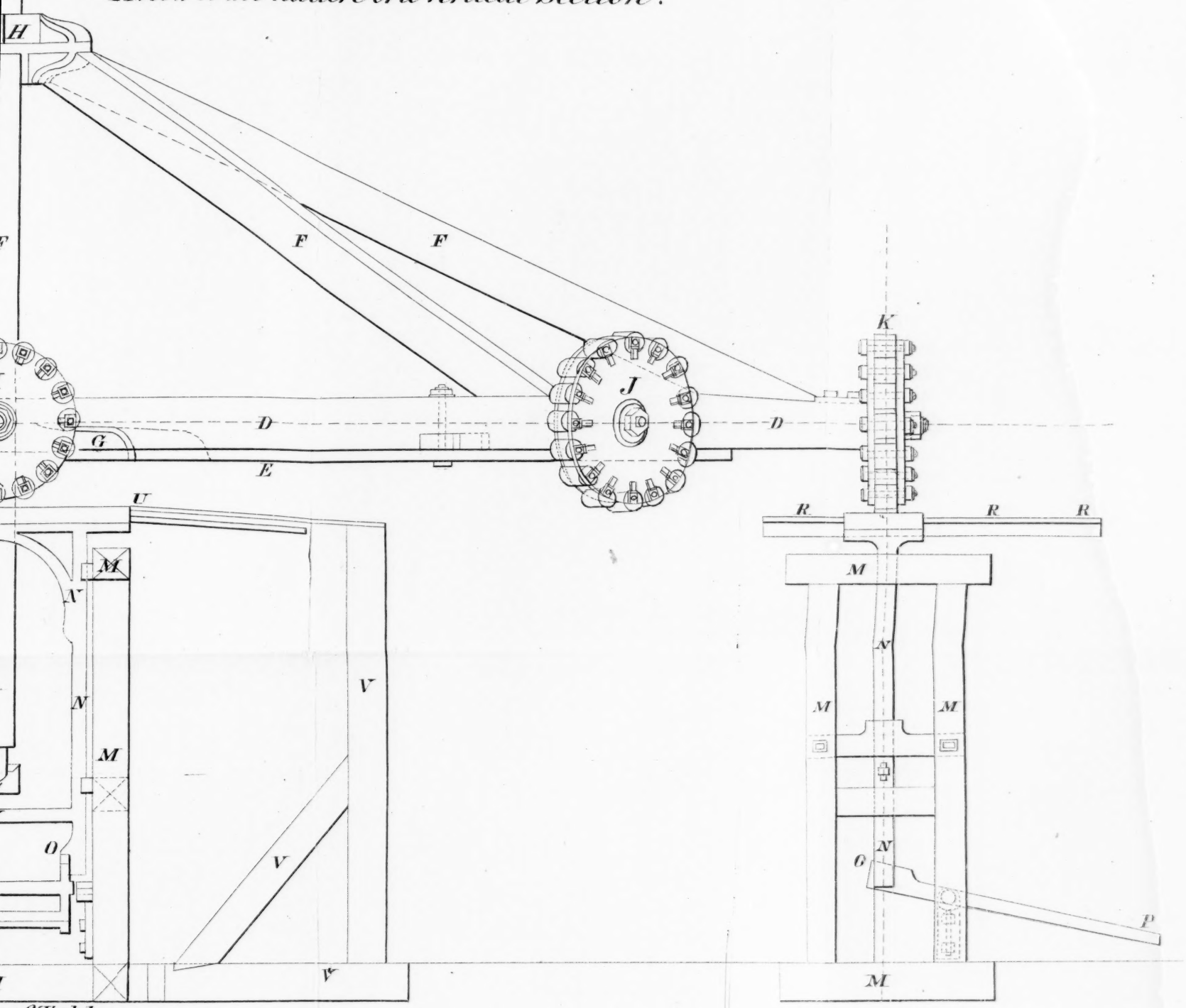
Front view of Table

FIG. 2



3

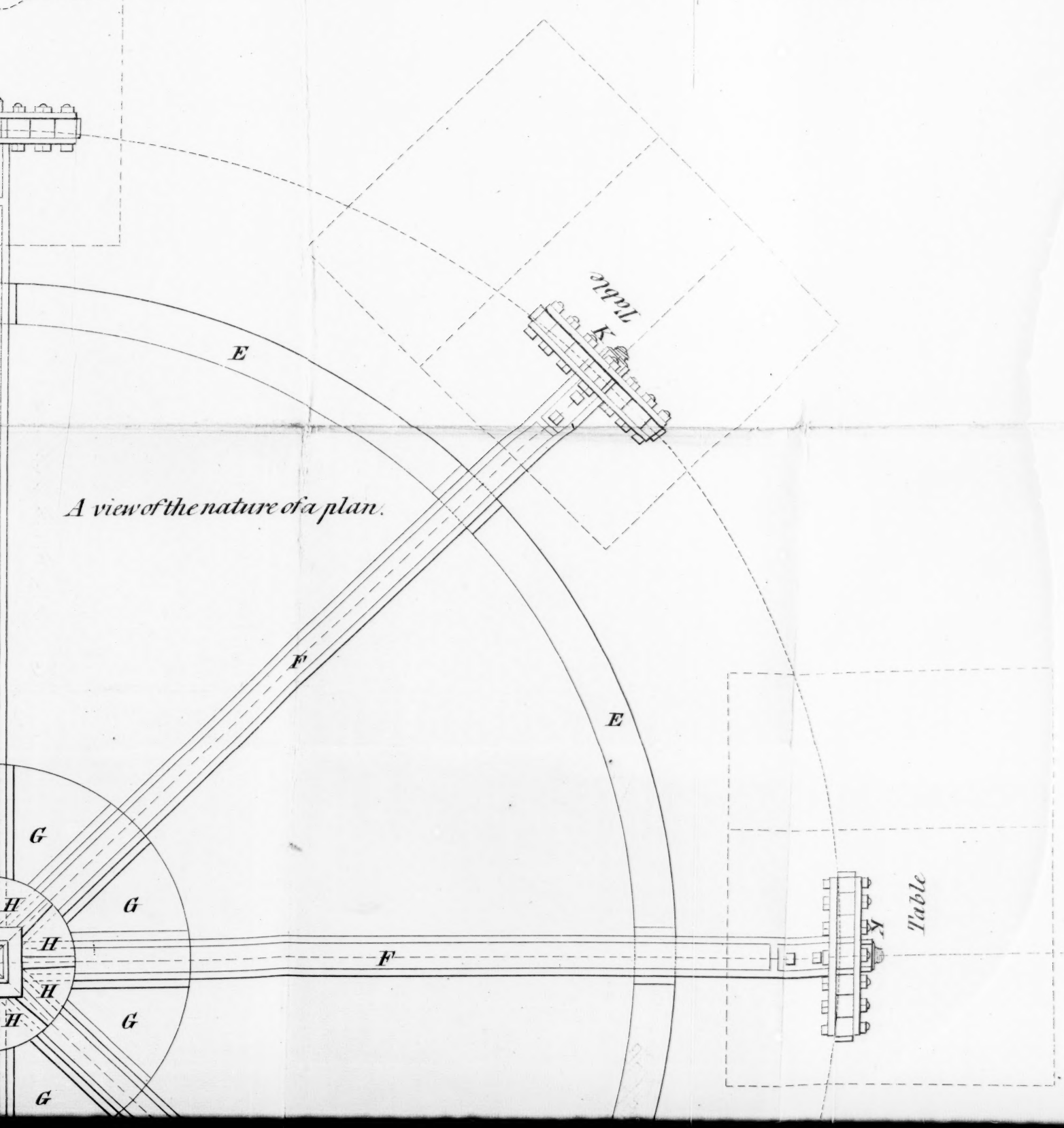
A view of the nature of a Vertical Section.



of Table

End view of Table

A view of the nature of a plan.



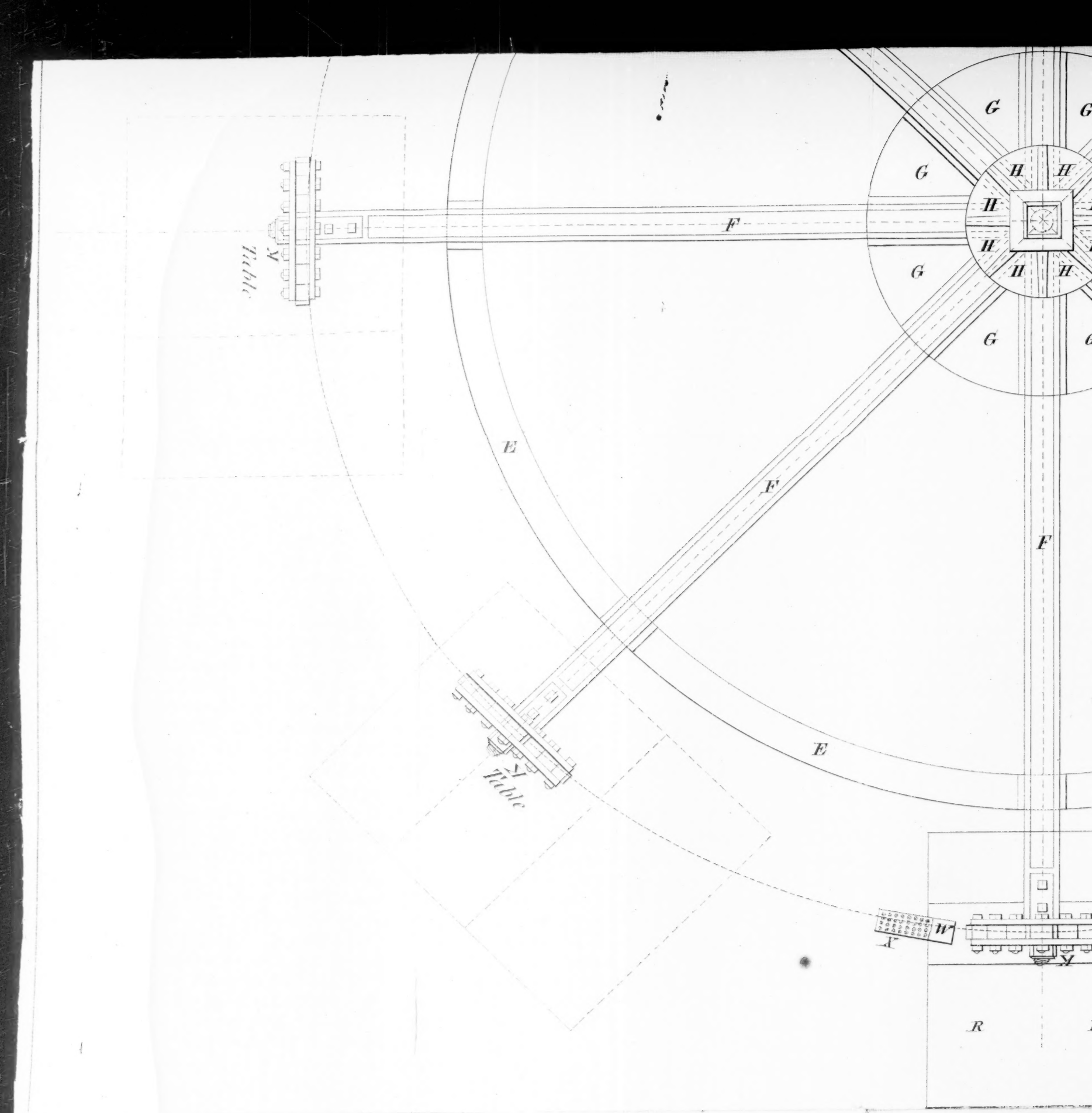


FIG.e 3.

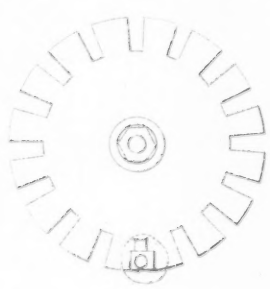


FIG.e 4.

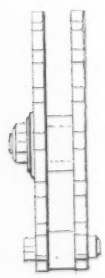


FIG.e 5.

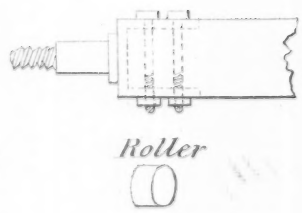
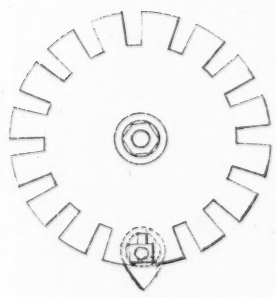


FIG.e 6.



The enrolled drawing is colored.

FIG.ᵉ 8 Table Faces.

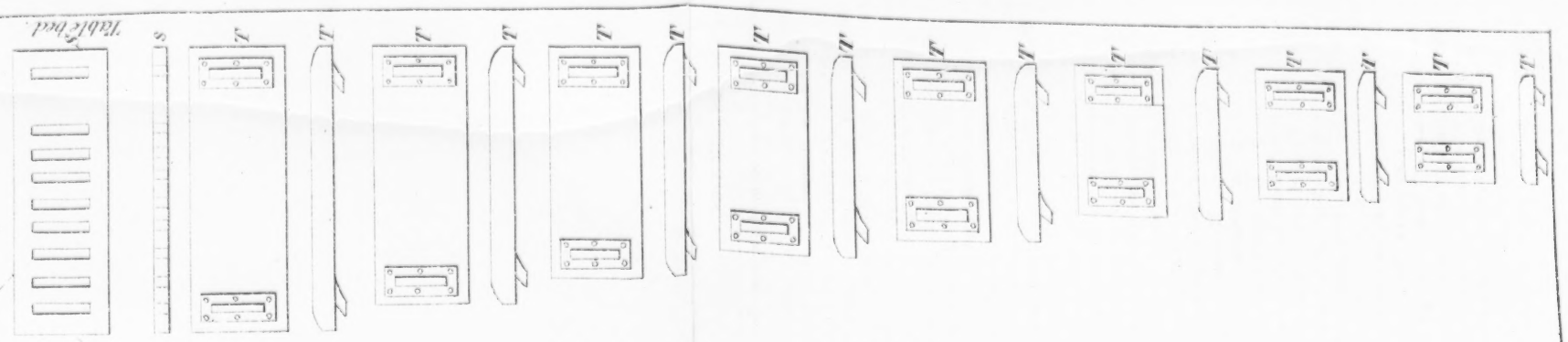
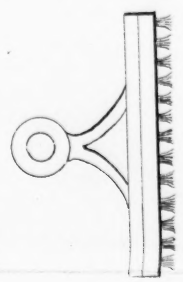
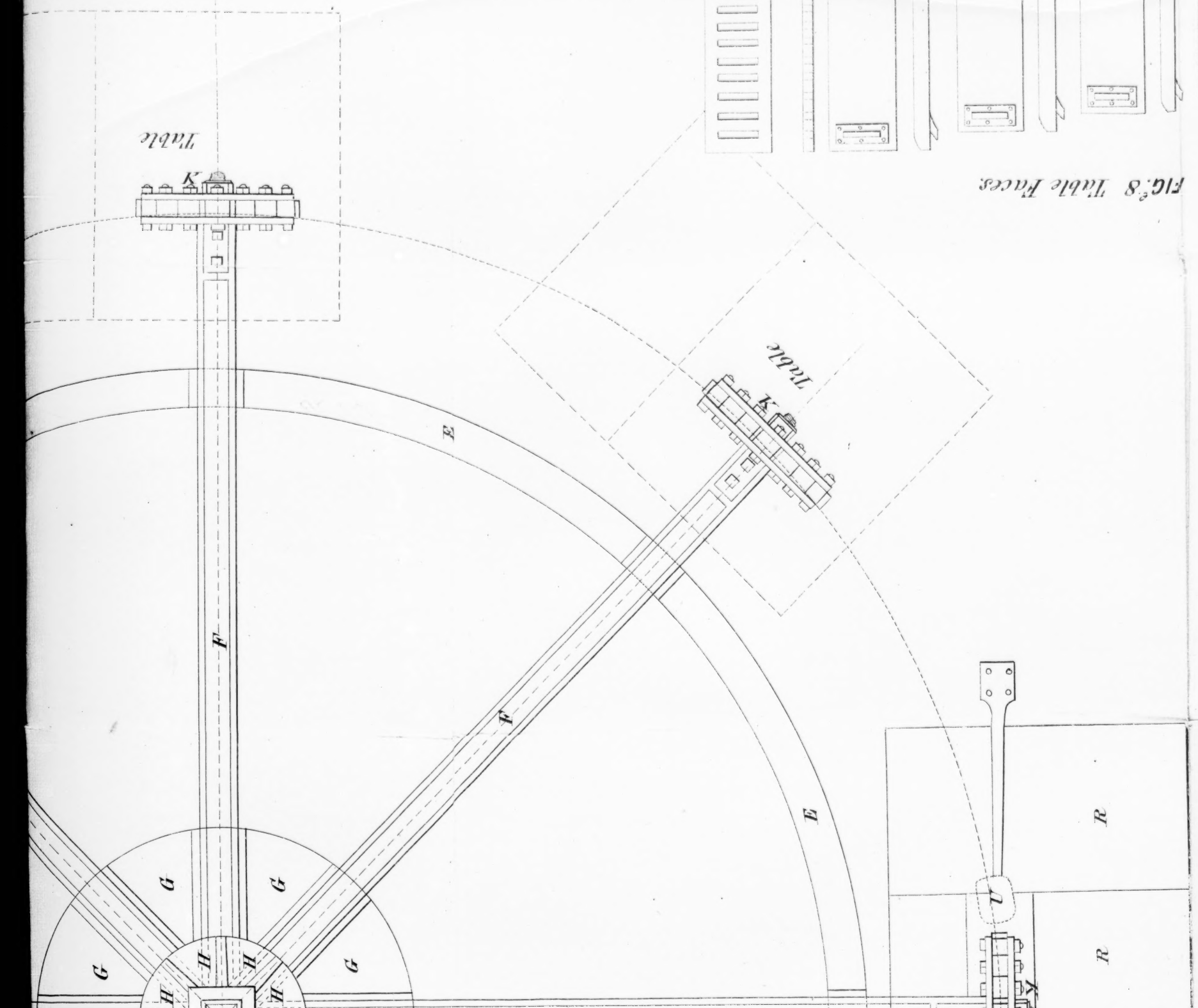


FIG.ᵉ 7.





MA

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THE C

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CITY OF

HUDSON

BLAST
FURNACE

FLAT

MAP OF A PORTION

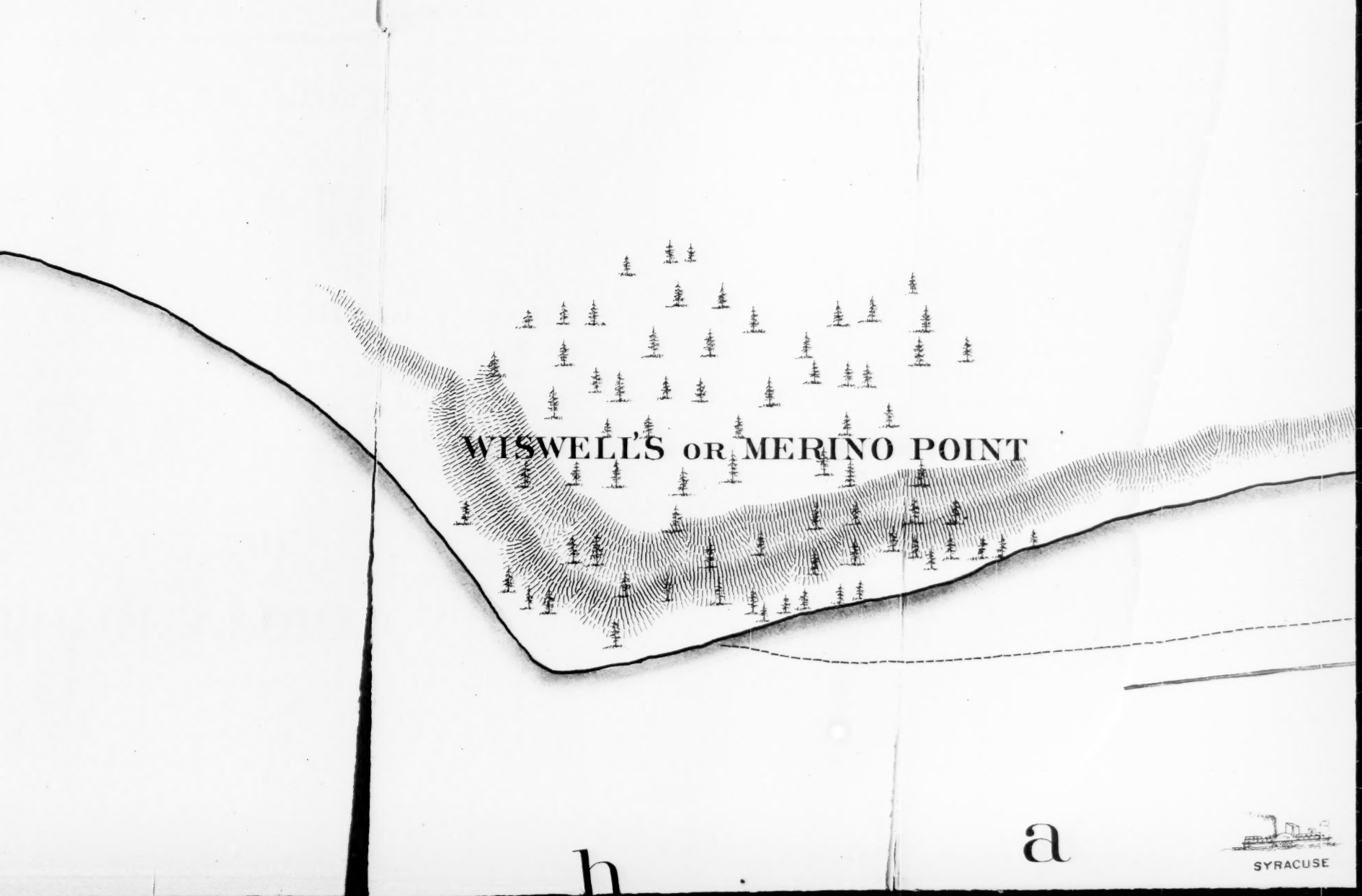
OF THE

OSON RIVER

LYING SOUTHWARD OF

CITY OF HUDSON.

Fuller City Surveyor Troy N.Y.



T ION

RIVER

D OF

HUDSON.

Troy N.Y.

THE WHITE HOUSE

WISWELL'S OR MERINO POINT

12 ft.

O. A. ARNOLD

950 ft.

SYRACUSE

S

E

W

12 ft

OLD

n R e

1100 ft

RIP VAN WIN

THE WHITE HOUSE

S

E

W

12 ft

O. A. ARNOLD

n R e

1100 ft

V

l

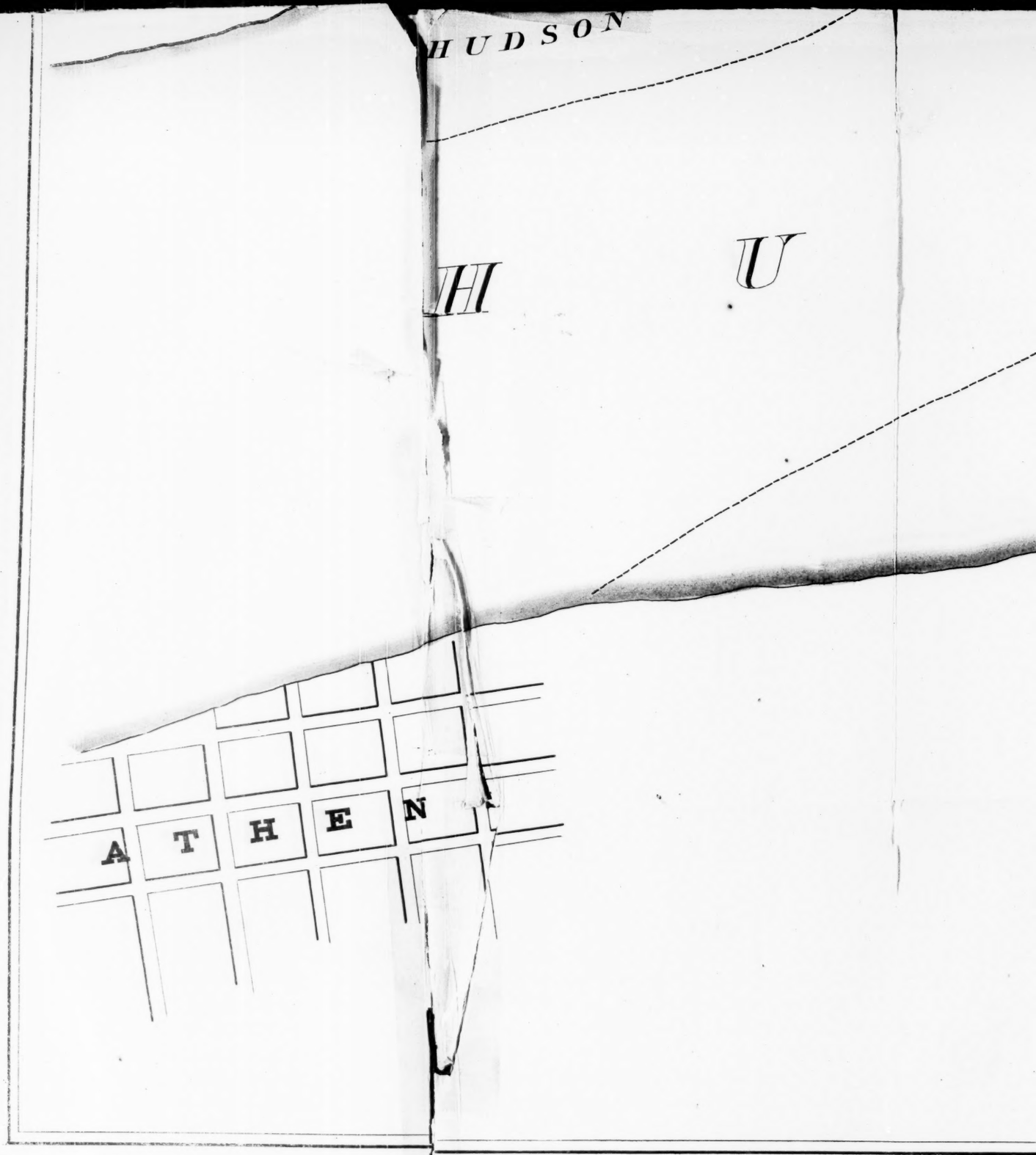
RIP VAN WIN

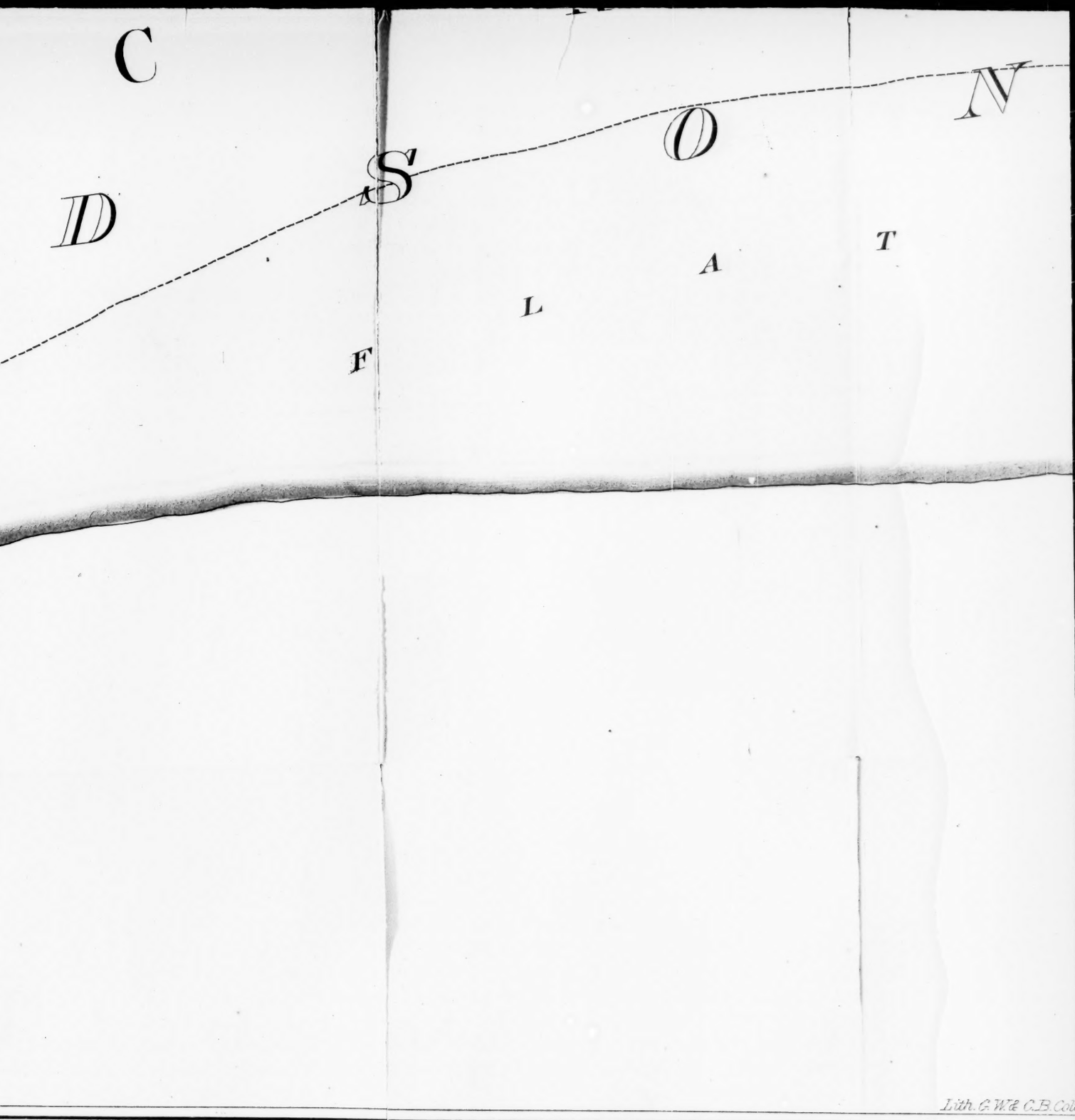
ROGERS

ISLAND

12 ft.

1500 ft.


HUDSON
ATHEN



Lith. C.W.& C.B.Col

121.
Buoy
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Lith. C. W. & C. B. Colton & Co 172 William St. N.Y.

Buoy

JOE JOHNSON

12 ft

Scale 400 Feet to One Inch

0 500 1000 1500 2000

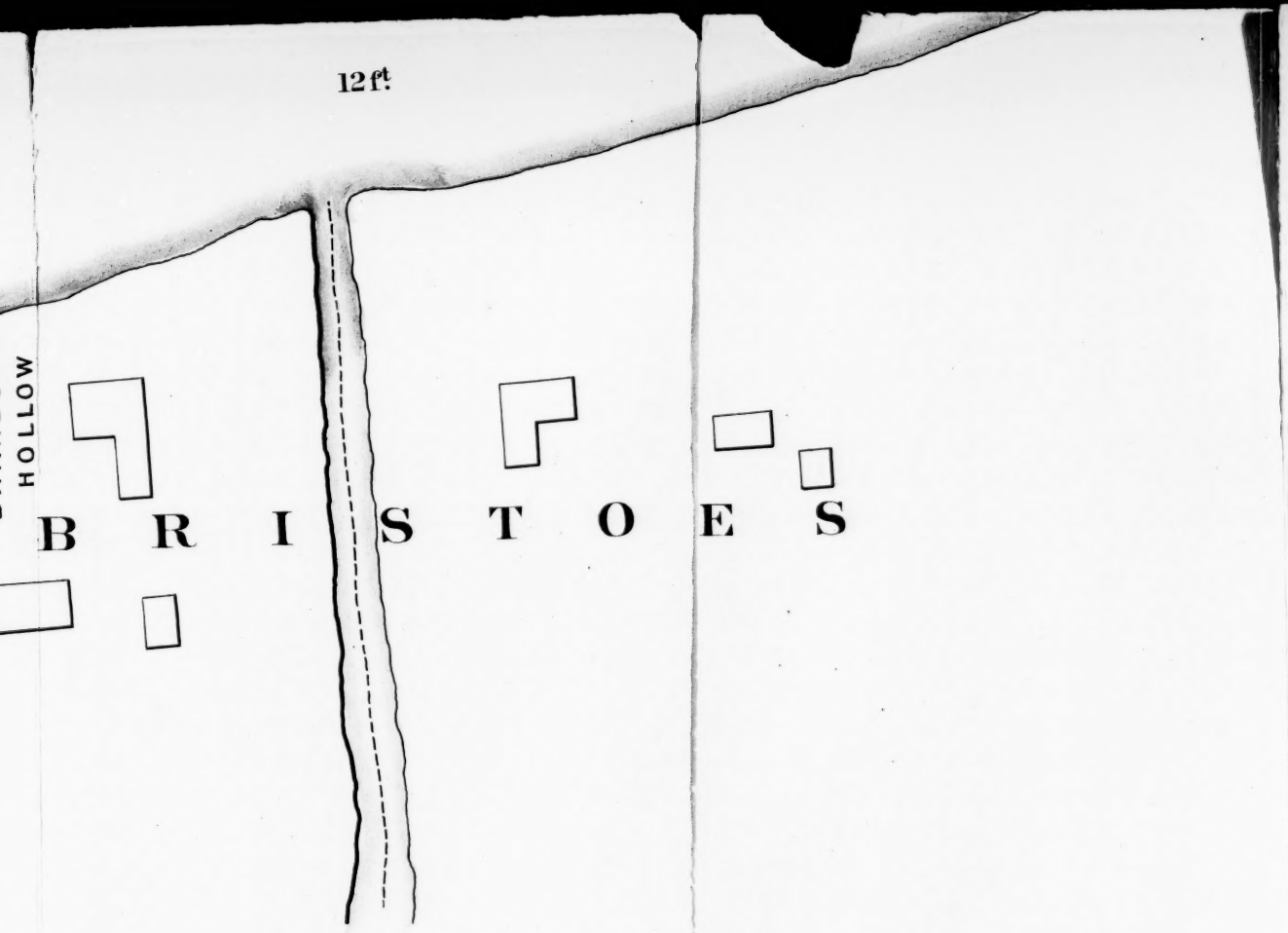
12 ft.

The words "Brandons Hollow" are inserted on the original map

BRANDON'S HOLLOW

400 Feet to One Inch

1000 1500 2000


12 ft
HOLLOW
B R I S T O E S